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<p style="text-align: right;">Page 1</p> <p>UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK -----X MARIA SUAREZ, Plaintiff, -against- Index No: 19-cv-07271(GRB)(SIL) SOUTHERN GLAZER'S WINE AND SPIRITS OF NEW YORK, LLC, Defendant. -----X VIDEOCONFERENCE EXAMINATION BEFORE TRIAL of the Defendant, SOUTHERN GLAZER'S WINE AND SPIRITS OF NEW YORK, LLC, taken by the Plaintiff, pursuant to Court Order, held on November 22, 2022, at 9:53 a.m., before a Notary Public of the State of New York. *****</p>	<p style="text-align: right;">Page 3</p> <p>1 2 STIPULATIONS 3 4 IT IS HEREBY STIPULATED AND AGREED by and 5 between the attorneys for the respective 6 parties herein, that filing, sealing and 7 certification be and the same are hereby waived. 8 IT IS FURTHER STIPULATED AND AGREED that all 9 objections, except as to the form of the question 10 shall be reserved to the time of the trial. 11 IT IS FURTHER STIPULATED AND AGREED that the 12 within deposition may be signed and sworn to 13 before any officer authorized to administer an 14 oath, with the same force and effect as if signed 15 and sworn to before The Court. 16 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 2</p> <p>1 2 APPEARANCES: 3 MOSER LAW FIRM, P.C. 4 Attorneys for Plaintiff 5 5 East Main Street 6 Huntington, New York 11743 7 8 BY: STEVEN MOSER, ESQ. 9 10 COSTANGY, BROOKS, SMITH & PROPHETE, LLP 11 Attorneys for Defendant 12 175 Pearl Street 13 Brooklyn, New York 11201 14 BY: ANJANETTE CABRERA, ESQ. 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 2 IT IS HEREBY STIPULATED AND AGREED by and between 3 counsel for all parties present that pursuant to 4 CPLR Section 3113(d), this deposition is to be 5 conducted by videoconference, that the court 6 reporter, all counsel, and the witness are all in 7 separate remote locations and participating via 8 videoconference (LegalView/Zoom) meeting under the 9 control of Lexitas Court Reporting Services, that 10 the officer administering the oath to the witness 11 need not be in the place of the deposition and the 12 witness shall be sworn in remotely by the court 13 reporter after confirming the witness's identity 14 that this videoconference will not be recorded in 15 any manner and that any recording without the 16 express written consent of all parties shall be 17 considered unauthorized, in violation of the law, 18 and shall not be used for any purpose in this 19 litigation or otherwise. 20 IT IS FURTHER STIPULATED that exhibits may be 21 marked by the attorney presenting the exhibit to 22 witness, and that a copy of any exhibit presented to 23 a witness shall be Emailed to or otherwise in 24 possession of all counsel prior to any questioning 25 of a witness regarding the exhibit in question. All</p>

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<p>1 parties shall bear their own costs in the conduct of</p> <p>2 this deposition by videoconference, notwithstanding</p> <p>3 the obligation by CPLR to supply a copy of the</p> <p>4 transcript to the deposed party by the taking party</p> <p>5 in civil litigation matters.</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 R. KOHN</p> <p>2 or medications, which would affect your ability to</p> <p>3 testify truthfully and accurately today?</p> <p>4 A. I am not.</p> <p>5 Q. Can you think of any reason you would not be</p> <p>6 able to give truthful and accurate testimony today?</p> <p>7 A. No.</p> <p>8 Q. Are you employed by Southern Glazer's Wine</p> <p>9 and Spirits?</p> <p>10 A. I am.</p> <p>11 Q. How long have you been employed by them?</p> <p>12 A. Approximately 15 years.</p> <p>13 Q. What is your current role?</p> <p>14 A. Vice president of operations for the</p> <p>15 northeast.</p> <p>16 Q. What geographic region encompasses the</p> <p>17 northeast?</p> <p>18 A. New York; Maryland; Washington, D.C.;</p> <p>19 Delaware; Pennsylvania; Maine; Vermont; and New</p> <p>20 Hampshire.</p> <p>21 Q. How long have you had this role?</p> <p>22 A. Two years.</p> <p>23 Q. Do you maintain an office at 313 Underhill</p> <p>24 Boulevard in Syosset?</p> <p>25 A. Yes.</p>
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<p>1 R O Y K O H N, the witness herein, having been</p> <p>2 first duly sworn by a Notary Public of the State of</p> <p>3 New York, was examined and testified as follows:</p> <p>4 EXAMINATION BY</p> <p>5 MR. MOSER:</p> <p>6 Q. State your name for the record, please.</p> <p>7 A. Roy Kohn.</p> <p>8 Q. State your address for the record, please.</p> <p>9 A. 313 Underhill Boulevard, Syosset, New York</p> <p>10 11791.</p> <p>11 Q. Good morning, Mr. Kohn. My name is Steve</p> <p>12 Moser. I am an attorney. I represent Maria Suarez</p> <p>13 in a case that she is bringing against Southern</p> <p>14 Glazer's Wine and Spirits. I am going to have some</p> <p>15 questions for you today. If you don't understand a</p> <p>16 question of mine, please let me know, and I will</p> <p>17 repeat it or rephrase it as many times as necessary;</p> <p>18 is that fair?</p> <p>19 A. Yes, sir.</p> <p>20 Q. If for some reason you don't understand a</p> <p>21 question of mine, don't answer it. Do you</p> <p>22 understand that as well?</p> <p>23 A. Yes, I do.</p> <p>24 Q. Are you under the influence of any narcotics</p> <p>25</p>	<p>1 R. KOHN</p> <p>2 Q. What was your title before?</p> <p>3 A. Vice president of operations for New York</p> <p>4 State.</p> <p>5 Q. What geographic location does that include?</p> <p>6 A. New York State.</p> <p>7 Q. Were you responsible in any way for</p> <p>8 supervising or managing any operations in northern</p> <p>9 New Jersey?</p> <p>10 A. Yes.</p> <p>11 Q. What locations in New Jersey were you</p> <p>12 responsible for?</p> <p>13 A. Linden, New Jersey.</p> <p>14 Q. Was that when you were the VP of Operations</p> <p>15 for New York State?</p> <p>16 A. That is correct.</p> <p>17 Q. Can you tell me the date on which you became</p> <p>18 the VP of northeast operations?</p> <p>19 A. It was in February of 2000.</p> <p>20 Q. So you became a VP of operations for New York</p> <p>21 State in February 2000, correct?</p> <p>22 A. No. I became VP for operations for New York</p> <p>23 State in December 2007. I held that role for 13 or</p> <p>24 so years and for the last two years held the</p> <p>25 regional role.</p>

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<p>1 R. KOHN</p> <p>2 Q. When you became the VP of operations for New</p> <p>3 York State in December 2007, where was your office?</p> <p>4 A. At 313 Underhill Boulevard in Syosset.</p> <p>5 Q. Did that remain your office for the entire</p> <p>6 time you were the VP of operations for the state of</p> <p>7 New York?</p> <p>8 A. That was one of my offices.</p> <p>9 Q. What other offices did you have?</p> <p>10 A. I had an office in Syracuse, New York. If</p> <p>11 you would like the address, it is 3063 Court Street,</p> <p>12 Syracuse.</p> <p>13 Q. How did you divide your time as VP of</p> <p>14 operations between 313 Underhill in Syosset and your</p> <p>15 office in Syracuse?</p> <p>16 A. I went where the work necessitated.</p> <p>17 Q. Can you approximate for me what percentage of</p> <p>18 your time you spent in Syracuse versus Syosset?</p> <p>19 A. Roughly one week a month in Syracuse,</p> <p>20 three weeks a month in Syosset.</p> <p>21 Q. Is your permanent residence on Long Island?</p> <p>22 A. No, it is not.</p> <p>23 Q. Where is your permanent residence?</p> <p>24 A. Today, Manhattan.</p> <p>25 Q. Did you ever have a residence in upstate New</p>	<p>1 R. KOHN</p> <p>2 you have access to financial information of Southern</p> <p>3 Glazer's Wine and Spirits?</p> <p>4 A. Yes.</p> <p>5 Q. Were you able to review their profit and loss</p> <p>6 statements?</p> <p>7 A. Yes.</p> <p>8 Q. Do they maintain a profit and loss statement</p> <p>9 for the State of New York as if it was an</p> <p>10 independent entity?</p> <p>11 A. There are two separate companies in New York,</p> <p>12 Southern Wine and Spirits or Southern Glazer's Wine</p> <p>13 and Spirits of Metropolitan New York and Southern</p> <p>14 Glazer's Wine and Spirits of Upstate New York.</p> <p>15 There were financial statements for both companies.</p> <p>16 Q. Those financial statements would have</p> <p>17 included all the regular financial things such as</p> <p>18 statement of cash flows, profit and loss statements,</p> <p>19 assets and liabilities?</p> <p>20 A. Typically, yes, but our financial packages</p> <p>21 did not include assets and liabilities. It did not</p> <p>22 include a balance sheet.</p> <p>23 Q. Who did you report to as VP of operations in</p> <p>24 New York State?</p> <p>25 A. In 2007?</p>
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<p>1 R. KOHN</p> <p>2 York, a permanent residence?</p> <p>3 A. No.</p> <p>4 Q. Has your permanent residence always been in</p> <p>5 the New York metropolitan area?</p> <p>6 A. Yes.</p> <p>7 Q. Could you describe for me what your duties</p> <p>8 were as VP of operations for New York State?</p> <p>9 A. I was responsible for, in a nutshell,</p> <p>10 everything except sales, which would include</p> <p>11 warehouse, delivery, occupancy, all of the</p> <p>12 administrative back of the house departments in all</p> <p>13 the facilities within the state.</p> <p>14 Q. How many individuals worked underneath you?</p> <p>15 A. At the time I was the VP of operations for</p> <p>16 New York State?</p> <p>17 Q. Correct.</p> <p>18 A. In total 800 at the time.</p> <p>19 Q. What was the lowest number of people that</p> <p>20 were under you when you were VP of operations as</p> <p>21 opposed to the lowest?</p> <p>22 A. 800 was probably the low average, and it</p> <p>23 probably grew to just under 1,000 for VP of</p> <p>24 operations in New York State.</p> <p>25 Q. As VP of operations for New York State, did</p>	<p>1 R. KOHN</p> <p>2 Q. Yes. When you first started.</p> <p>3 A. Larry Goodrich. Lawrence Goodrich was the</p> <p>4 general manager of New York State.</p> <p>5 Q. For how long was he your manager?</p> <p>6 A. Roughly ten years.</p> <p>7 Q. Who was your manager after Larry Goodrich?</p> <p>8 A. When Larry retired, he was replaced by Martin</p> <p>9 Crane who became my manager.</p> <p>10 Q. Martin Crane's title was also GM of New York</p> <p>11 State?</p> <p>12 A. Yes. Executive vice president general</p> <p>13 manager.</p> <p>14 Q. Who did Larry Goodrich report to?</p> <p>15 A. To our corporate office in Miami.</p> <p>16 Q. What individual did he report to?</p> <p>17 A. I believe it was Brad Vassar.</p> <p>18 Q. Who is Brad Vassar?</p> <p>19 A. He was the chief operating officer who has</p> <p>20 since retired.</p> <p>21 Q. We have been referring to Southern Glazer's</p> <p>22 Wine and Spirits, but it has not always been known</p> <p>23 as Southern Glazer's Wine and Spirits, correct?</p> <p>24 A. Correct.</p> <p>25 Q. For some period of time, it was Southern Wine</p>

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<p>1 R. KOHN</p> <p>2 and Spirits?</p> <p>3 A. Correct, sir.</p> <p>4 Q. If I refer to both Southern Wine and Spirits</p> <p>5 and Southern Glazer's Wine and Spirits as Southern</p> <p>6 for the rest of the deposition, can I do that so we</p> <p>7 can simplify it?</p> <p>8 A. Of course.</p> <p>9 Q. Is Southern privately owned?</p> <p>10 A. Yes.</p> <p>11 Q. By whom?</p> <p>12 A. Several families.</p> <p>13 Q. Which families?</p> <p>14 A. The Chaplain family, the Glazer family, the</p> <p>15 Becker family, and I am unsure of anyone else.</p> <p>16 Q. That is today, correct?</p> <p>17 A. That is correct.</p> <p>18 Q. Who was Southern Glazer's Wine and Spirits</p> <p>19 owned by?</p> <p>20 A. The same list of owners with the exception of</p> <p>21 the Glazer family.</p> <p>22 Q. So the Chaplain family and the Becker family?</p> <p>23 A. Yes, and perhaps others that I am not aware</p> <p>24 of.</p> <p>25 Q. Was the Chaplain family the majority</p>	<p>1 R. KOHN</p> <p>2 State?</p> <p>3 A. Seven or eight.</p> <p>4 (Whereupon, Organizational Chart January</p> <p>5 2016 was marked as Plaintiff's Exhibit 19,</p> <p>6 for identification, as of this date.)</p> <p>7 (Whereupon, Organizational Chart October</p> <p>8 2016 was marked as Plaintiff's Exhibit 20,</p> <p>9 for identification, as of this date.)</p> <p>10 (Whereupon, Organizational Chart January</p> <p>11 2017 was marked as Plaintiff's Exhibit 21,</p> <p>12 for identification, as of this date.)</p> <p>13 (Whereupon, Operations Organization Chart</p> <p>14 was marked as Plaintiff's Exhibit 22, for</p> <p>15 identification, as of this date.)</p> <p>16 (Whereupon, Organization Chart August</p> <p>17 2018 was marked as Plaintiff's Exhibit 23,</p> <p>18 for identification, as of this date.)</p> <p>19 Q. Do you understand you are here today to</p> <p>20 testify based upon certain specified topics?</p> <p>21 A. Yes.</p> <p>22 Q. Was one of those topics, to your knowledge,</p> <p>23 the production of documents that Southern made in</p> <p>24 this case?</p> <p>25 A. Yes.</p>
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<p>1 R. KOHN</p> <p>2 shareholders?</p> <p>3 A. I believe so.</p> <p>4 Q. Were the Chaplains and the Beckers part of</p> <p>5 the same family or were they actually different</p> <p>6 families?</p> <p>7 A. I don't know.</p> <p>8 Q. Who was the CEO of Southern in 2007?</p> <p>9 A. I believe it was Brad Vassar.</p> <p>10 Q. As VP of operations for the state of New</p> <p>11 York, did you have to meet with the owners of the</p> <p>12 company?</p> <p>13 A. I met them, yes.</p> <p>14 Q. On how many different occasions?</p> <p>15 A. A handful.</p> <p>16 Q. Where did you meet them?</p> <p>17 A. Most likely at a corporate meeting.</p> <p>18 Q. Here or in Florida?</p> <p>19 A. I think both.</p> <p>20 Q. Did your duties remain more or less the same</p> <p>21 for the entire time you were VP of operations for</p> <p>22 the state of New York?</p> <p>23 A. Generally the same, yes.</p> <p>24 Q. How many people directly reported to you</p> <p>25 while you were the VP of operations of New York</p>	<p>1 R. KOHN</p> <p>2 Q. I am going to show you Plaintiff's</p> <p>3 Exhibit 19, which has a Bates stamp in the lower</p> <p>4 right-hand corner SGWS001197 to SWGS001122. I would</p> <p>5 like you to take a couple of minutes to review it.</p> <p>6 A. I have reviewed it.</p> <p>7 Q. This may sound a little bit fundamental, but</p> <p>8 not everybody knows, but what is an organizational</p> <p>9 chart?</p> <p>10 A. It is typically a visual that determines the</p> <p>11 hierarchy of an organization.</p> <p>12 Q. Is that what this particular document is?</p> <p>13 A. Yes.</p> <p>14 Q. Does it show the relationship between</p> <p>15 employees at the New York operations division in</p> <p>16 January 2016?</p> <p>17 A. Yes.</p> <p>18 Q. Is it true and accurate?</p> <p>19 A. In my moment reviewing it, yes, it appears to</p> <p>20 be true and accurate.</p> <p>21 Q. Did this document exist or was it created by</p> <p>22 Southern in response to our request?</p> <p>23 A. No. It certainly existed.</p> <p>24 Q. Is it important to have these current?</p> <p>25 A. That is typically an internal document.</p>

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<p style="text-align: right;">Page 17</p> <p>1 R. KOHN</p> <p>2 Q. Is there any reason to believe that this</p> <p>3 document is not true and accurate or does not truly</p> <p>4 and accurately depict the relationship between</p> <p>5 employees?</p> <p>6 A. No.</p> <p>7 Q. If you turn to SGWS001108.</p> <p>8 A. Yes.</p> <p>9 Q. This shows that in January 2016 you were the</p> <p>10 VP of operations for New York State, correct?</p> <p>11 A. Yes.</p> <p>12 Q. The line going down where it says here</p> <p>13 Nanette Ellia, executive administrative assistant,</p> <p>14 what does that mean when you have that horizontal</p> <p>15 line there?</p> <p>16 A. Nanette is my executive assistant.</p> <p>17 Q. Does she help you manage the managers or</p> <p>18 assist you in your duties?</p> <p>19 A. She assists me administratively.</p> <p>20 Q. In terms of an organizational chart, the</p> <p>21 people on the bottom report to the people on top?</p> <p>22 A. Correct. It is a hierarchy.</p> <p>23 Q. Kevin Randall was the vice president for</p> <p>24 Metro New York in January 2016, correct?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 19</p> <p>1 R. KOHN</p> <p>2 depict the relationship between employees that</p> <p>3 existed as of January 2016?</p> <p>4 A. Would you point me to a specific page or</p> <p>5 would you like me to go through the whole document</p> <p>6 again?</p> <p>7 Q. For this question I will target certain pages</p> <p>8 so we don't cover the same material.</p> <p>9 A. Thank you.</p> <p>10 Q. I would like to draw your attention to pages</p> <p>11 1108, 1109, 1117 and 1119?</p> <p>12 A. Okay.</p> <p>13 Q. For those specific four pages, do these pages</p> <p>14 fairly and accurately depict the relationship</p> <p>15 between employees that existed as of January 2016?</p> <p>16 MS. CABRERA: Objection.</p> <p>17 You are free to answer the question.</p> <p>18 I just want to be clear that this is</p> <p>19 beyond the scope of the 30(b)(6) notice. The</p> <p>20 30(b)(6) notice indicated you wanted to ask</p> <p>21 questions regarding how these documents</p> <p>22 produced. There is nothing in the notice</p> <p>23 that talks about confirming reporting</p> <p>24 relations. So again, the witness is free to</p> <p>25 answer the question, but he is doing so as a</p>
<p style="text-align: right;">Page 18</p> <p>1 R. KOHN</p> <p>2 Q. For how long had Kevin Randall been the VP of</p> <p>3 operations in Metropolitan New York?</p> <p>4 A. I think he has been the vice president of</p> <p>5 operations for roughly eight years.</p> <p>6 Q. So that is approximately going back to 2014?</p> <p>7 A. Approximately, yes.</p> <p>8 MR. MOSER: Off the record.</p> <p>9 (Whereupon, a discussion was held off the</p> <p>10 record.)</p> <p>11 Q. Have you had the opportunity to completely</p> <p>12 review Plaintiff's Exhibit 19?</p> <p>13 A. This is the original document you gave me</p> <p>14 before the brief break?</p> <p>15 Q. Yes.</p> <p>16 A. Yes.</p> <p>17 Q. Does that fairly and accurately depict the</p> <p>18 individuals employed by Southern as of January 2016?</p> <p>19 A. Yes.</p> <p>20 Q. Does it fairly and accurately depict the</p> <p>21 titles that these individuals had as of</p> <p>22 January 2016?</p> <p>23 A. Let me review each title. Yes. They all</p> <p>24 look correct.</p> <p>25 Q. Does this document fairly and accurately</p>	<p style="text-align: right;">Page 20</p> <p>1 R. KOHN</p> <p>2 fact witness and not as a 30(b)(6).</p> <p>3 A. Yes. The relationships on 1108, 1109, 1117,</p> <p>4 and 1119 appear to be correct.</p> <p>5 Q. Let's turn to Plaintiff's Exhibit 20 for</p> <p>6 identification.</p> <p>7 Have you had the opportunity to review that</p> <p>8 document?</p> <p>9 A. Yes.</p> <p>10 Q. I will draw your attention specifically to</p> <p>11 several pages of this document. I would like you to</p> <p>12 look at 1151, 1152, 1160, and 1162.</p> <p>13 A. Yes. The relationships on 1151, 1152, 1160,</p> <p>14 and 1162 appear to be accurate.</p> <p>15 Q. I will have a series of questions regarding</p> <p>16 these four pages.</p> <p>17 Do these four pages fairly and accurately</p> <p>18 show the individuals employed by Southern in</p> <p>19 October 2016?</p> <p>20 MS. CABRERA: I am going to make the same</p> <p>21 objection. This goes beyond the scope of the</p> <p>22 30(b)(6) notice. The witness is free to</p> <p>23 answer as a fact witness.</p> <p>24 A. Yes. These appear to be correct.</p> <p>25 Q. Do they fairly and accurately depict these</p>

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<p style="text-align: right;">Page 21</p> <p>1 R. KOHN</p> <p>2 individuals' titles as well?</p> <p>3 A. Where the titles are present, they appear to</p> <p>4 be correct.</p> <p>5 Q. So I am going to show you another document</p> <p>6 that has been marked as Plaintiff's Exhibit 21, and</p> <p>7 I am going to draw your attention to four pages of</p> <p>8 this document. I am going to have the same question</p> <p>9 with regard to those four pages. The question is</p> <p>10 whether or not those pages fairly and accurately</p> <p>11 depict the employees of Southern, their titles, and</p> <p>12 their relationships as of the date of this</p> <p>13 organization chart? I will give you the four pages.</p> <p>14 They are 1124, 1125, 1133 and 1135.</p> <p>15 MS. CABRERA: I am going to note the same</p> <p>16 objection. This goes beyond the notice. The</p> <p>17 witness is free to answer as a fact witness,</p> <p>18 but not as a 30(b)(6) witness.</p> <p>19 A. Can you repeat the question.</p> <p>20 Q. Do these four pages fairly and accurately</p> <p>21 depict the individuals employed, their titles, and</p> <p>22 their relationships as of the date of this</p> <p>23 organizational chart?</p> <p>24 A. You are asking me about titles of individuals</p> <p>25 from five plus years ago.</p>	<p style="text-align: right;">Page 23</p> <p>1 R. KOHN</p> <p>2 reviewing.</p> <p>3 A. Was that a hint that I am taking too long?</p> <p>4 Q. No. You can take as much time as you like.</p> <p>5 A. I believe this is accurate.</p> <p>6 Q. So do these three pages, 1084, 1085 and 1094.</p> <p>7 Fairly accurately depict the employees that worked,</p> <p>8 their titles, and their relationships as of</p> <p>9 April 2018?</p> <p>10 A. Again, I will preface by saying this is four</p> <p>11 and a half years ago, and yes.</p> <p>12 Q. I am going to show you the last</p> <p>13 organizational chart, thankfully, plaintiff's</p> <p>14 Exhibit 23 for identification. I would like to draw</p> <p>15 your attention to two pages of this document. They</p> <p>16 are 1096 and 1103.</p> <p>17 A. May I refer back to the last document?</p> <p>18 Q. Of course you may.</p> <p>19 A. This one just looks a little bit cleaned up</p> <p>20 versus the prior one, versus 1094.</p> <p>21 Q. You are referring to 1103?</p> <p>22 A. Yes. 1103 and 1094.</p> <p>23 Q. When you say 1103 is cleaned up, can you be</p> <p>24 more specific.</p> <p>25 A. There are many more boxes on 1094 than 1103.</p>
<p style="text-align: right;">Page 22</p> <p>1 R. KOHN</p> <p>2 Q. I understand.</p> <p>3 A. They appear to be correct.</p> <p>4 Q. Do you have any reason to believe they are</p> <p>5 not accurate?</p> <p>6 A. But you are asking me to verify titles in</p> <p>7 excess of five years ago.</p> <p>8 Q. I understand, but how about with individuals</p> <p>9 employed and their relationships? Does it fairly</p> <p>10 and accurately depict the individuals and their</p> <p>11 relationships?</p> <p>12 A. Again, I will preface that this is in excess</p> <p>13 of five years ago, but their relationships do look</p> <p>14 correct.</p> <p>15 Q. I am going to show you what was marked as</p> <p>16 Plaintiff's Exhibit 22 for identification, and I</p> <p>17 would like to draw your attention to three pages of</p> <p>18 this document. They are 1084, 1085 and 1094.</p> <p>19 A. The last number is 1094?</p> <p>20 Q. Correct.</p> <p>21 A. Is that the final page of the document? It</p> <p>22 is just over font.</p> <p>23 Q. Yes, it is the final page.</p> <p>24 A. Thank you.</p> <p>25 Q. Just let me know when you are finished</p>	<p style="text-align: right;">Page 24</p> <p>1 R. KOHN</p> <p>2 Q. Do you know why that is?</p> <p>3 A. It appears 1094 is more detailed, including</p> <p>4 clerical employees, extra steadies, drivers,</p> <p>5 casuals, receiving clerks, steady drivers.</p> <p>6 Q. So you pointed out that the 1103 does not</p> <p>7 include low level employees; is that fair to say?</p> <p>8 A. I believe 1103 is a more top-line view</p> <p>9 excluding some hourly workforce positions. I see</p> <p>10 some supervisors omitted. It looks like it is</p> <p>11 focused on the manager/director level than below.</p> <p>12 Q. So you are talking about 1103, correct?</p> <p>13 A. Yes.</p> <p>14 Q. So other than that, when we look at 1096 and</p> <p>15 1103, do they fairly and accurately depict the</p> <p>16 individuals employed, their titles and relationships</p> <p>17 as of October 2016?</p> <p>18 A. I think you said 1096 and 1103. It is 1094</p> <p>19 and 1103.</p> <p>20 Q. No, no. I am talking about 1096, which is</p> <p>21 the first page I drew your attention to of</p> <p>22 Exhibit 23.</p> <p>23 So other than the differences that you have</p> <p>24 observed and pointed out between 1094 and 1103,</p> <p>25 other than those differences, do 1096 and 1103</p>

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<p style="text-align: right;">Page 25</p> <p>1 R. KOHN</p> <p>2 fairly and accurately depict the individuals</p> <p>3 employed, their titles, and their relationships as</p> <p>4 of October 2016?</p> <p>5 MS. CABRERA: Objection. Exhibit 23 is</p> <p>6 August 2018.</p> <p>7 MR. MOSER: I apologize. Let me withdraw</p> <p>8 the question.</p> <p>9 Q. Other than the differences that you have</p> <p>10 pointed out between 1094 and 1103, do pages 1096 and</p> <p>11 1103 fairly and accurately depict the individuals</p> <p>12 employed, their titles, and their relationships as</p> <p>13 of August 2018?</p> <p>14 A. I will again preface this by saying this is</p> <p>15 in excess of four years ago, but yes, they look</p> <p>16 correct.</p> <p>17 Q. Do you know why hourly employees and</p> <p>18 supervisors were excluded from 1103?</p> <p>19 A. No, I do not. I started this conversation by</p> <p>20 saying it appeared that the document was cleaned up.</p> <p>21 Q. Should there be an organizational chart that</p> <p>22 shows all of the relationships included hourly</p> <p>23 employees?</p> <p>24 A. Depends on what the organizational chart will</p> <p>25 be used for.</p>	<p style="text-align: right;">Page 27</p> <p>1 R. KOHN</p> <p>2 any time before she was let go?</p> <p>3 A. Can you elaborate on assisting her in her</p> <p>4 duties.</p> <p>5 Q. Well, did he help her in any way, to your</p> <p>6 knowledge?</p> <p>7 A. I am sure he did.</p> <p>8 Q. Do you have any specific knowledge of the</p> <p>9 ways in which he helped her?</p> <p>10 A. Through me preparing for today's deposition,</p> <p>11 I saw a lot of emails, I looked at a lot of</p> <p>12 documents and Maria's performance degraded over</p> <p>13 time, and because Barry was a support person in the</p> <p>14 facility with a manager title, I am sure he assisted</p> <p>15 Maria in her duties.</p> <p>16 Q. Why do you believe it was Barry Finkelstein</p> <p>17 versus someone else who stepped in to help Maria</p> <p>18 before she was finally let go?</p> <p>19 A. I believe many people assisted Maria. You</p> <p>20 asked me specifically if I believe Barry did. I</p> <p>21 think there were many more people than Barry that</p> <p>22 supported Maria.</p> <p>23 Q. Do you have knowledge of the specific ways in</p> <p>24 which Barry helped Maria before she was finally let</p> <p>25 go?</p>
<p style="text-align: right;">Page 26</p> <p>1 R. KOHN</p> <p>2 Q. But did Southern maintain organizational</p> <p>3 charts showing the relationships between all</p> <p>4 employees?</p> <p>5 A. I don't believe so.</p> <p>6 Q. Do you know why 1103 appears to be cleaned</p> <p>7 up?</p> <p>8 A. No.</p> <p>9 Q. Do you know if there was a title called</p> <p>10 inventory control clerk or cycle counter in</p> <p>11 August 2018 in the Syosset warehouse?</p> <p>12 A. I believe there was.</p> <p>13 Q. Those individuals, who did they report to in</p> <p>14 August 2018?</p> <p>15 A. Likely to Barry Finkelstein.</p> <p>16 Q. Why would that have been Barry Finkelstein or</p> <p>17 what leads you to believe it was Barry Finkelstein?</p> <p>18 A. I believe when Ms. Suarez was released from</p> <p>19 the company, her duties were split between Tonisha</p> <p>20 Durant and Barry Finkelstein.</p> <p>21 MR. MOSER: I know this is beyond the</p> <p>22 topic. I know this is whether he has</p> <p>23 personal knowledge of this.</p> <p>24 Q. Do you know whether Barry Finkelstein was</p> <p>25 assisting Maria in the performance of her duties at</p>	<p style="text-align: right;">Page 28</p> <p>1 R. KOHN</p> <p>2 THE WITNESS: Am I the company witness at</p> <p>3 this point or am I Roy?</p> <p>4 MS. CABRERA: No. You are Roy.</p> <p>5 Q. Based upon your personal knowledge.</p> <p>6 A. Maria's performance was degrading. She had a</p> <p>7 longstanding performance problem; and people went</p> <p>8 out of their way to try to help her regain her</p> <p>9 footing, maintain her position, and correct a lot of</p> <p>10 ineffectiveness, poor performance and financial</p> <p>11 losses that she was creating for the organization.</p> <p>12 So this was a transition from a manual inventory</p> <p>13 system to a more fully automated scanning system.</p> <p>14 There were not just people from Syosset and New York</p> <p>15 State on site. There were people from all over</p> <p>16 America to support the transformation of the</p> <p>17 perpetual inventory from being processed manually to</p> <p>18 being more mechanized and automated. Any time a</p> <p>19 facility goes live with a new system, whether it be</p> <p>20 a conveyer system, a sortation system, a WMI system,</p> <p>21 a warehouse management system. Any new type of</p> <p>22 software the country's experts come to the site to</p> <p>23 lend a hand to help take away the learning curve, to</p> <p>24 train on-site people and to prepare the local group</p> <p>25 to exist without them. I would say during the time</p>

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<p style="text-align: right;">Page 29</p> <p>1 R. KOHN</p> <p>2 that these experts from America from Southern in</p> <p>3 America came on site, Maria was given an</p> <p>4 extraordinary amount of attention to help her get</p> <p>5 through her learning curve and try to find a place</p> <p>6 that was going to make her more functional for the</p> <p>7 company as opposed to someone who was belligerent</p> <p>8 and being quite obstinate in taking advice from the</p> <p>9 experts in the company. So I would say there were a</p> <p>10 lot of people outside of Barry Finkelstein that</p> <p>11 supported Maria Suarez.</p> <p>12 Q. I thank you for you that, but specifically</p> <p>13 with regard to Barry Finkelstein, do you know what</p> <p>14 ways in which Barry Finkelstein supported Maria in</p> <p>15 her role before she was finally let go?</p> <p>16 A. Specifically, I wasn't with the two of them</p> <p>17 when he was working with her, but Barry Finkelstein</p> <p>18 was one of the on-site experts, and Maria's</p> <p>19 performance was degrading. So it behooved Barry</p> <p>20 Finkelstein and the company to get Maria up to</p> <p>21 speed. Specifics to what he did to sit with her to</p> <p>22 train her on the scanning or the processes and</p> <p>23 procedures, I can't speak to, but Maria had more</p> <p>24 attention provided by this group of people than</p> <p>25 anyone would have ever anticipated.</p>	<p style="text-align: right;">Page 31</p> <p>1 R. KOHN</p> <p>2 Q. What is the difference before a supervisor</p> <p>3 and a manager?</p> <p>4 A. I'm not sure of the question you are asking.</p> <p>5 I know what I heard, but I'm not sure what you are</p> <p>6 asking.</p> <p>7 Q. You talked before about there are managers,</p> <p>8 there are supervisors, and I am just wondering if</p> <p>9 there is a difference between a manager and</p> <p>10 supervisor at Southern and if so, what that</p> <p>11 difference is?</p> <p>12 A. There are managers and supervisors of people,</p> <p>13 and there are managers and supervisors of processes.</p> <p>14 Q. Is there any difference between a manager and</p> <p>15 a supervisor?</p> <p>16 A. Yes.</p> <p>17 Q. Managers and supervisors of people, let's</p> <p>18 say, what is the difference between a manager and</p> <p>19 supervisor of people?</p> <p>20 A. A manager may be responsible for more people</p> <p>21 or more critical processes.</p> <p>22 Q. Are there any other differences between</p> <p>23 managers and supervisors?</p> <p>24 A. I am sure there are many.</p> <p>25 Q. Do you know an individual by the name of</p>
<p style="text-align: right;">Page 30</p> <p>1 R. KOHN</p> <p>2 Q. So did Barry Finkelstein have disciplinary</p> <p>3 authority of inventory control clerks before Maria</p> <p>4 left the company?</p> <p>5 A. Barry Finkelstein was a manager for the</p> <p>6 company. He would surely have disciplinary</p> <p>7 authority over people in the inventory control</p> <p>8 sector.</p> <p>9 Q. Was Maria a manager?</p> <p>10 A. At what point in time?</p> <p>11 Q. At any point in time.</p> <p>12 A. Maria applied for the WMI administrator role</p> <p>13 in 2016. She was awarded the role. She was</p> <p>14 qualified for the role. Don't be misled by the</p> <p>15 title of administrator. The inventory control</p> <p>16 clerks reported through her. Her voice was heard</p> <p>17 when she talked about them. Yes, she had authority</p> <p>18 over that group of people, and I think at the height</p> <p>19 she had four or five inventory clerks reporting to</p> <p>20 her.</p> <p>21 Q. So when she became the WMI administrator,</p> <p>22 although not having the formal title of manager, in</p> <p>23 your opinion she was a manager?</p> <p>24 A. She had supervisory authority over the people</p> <p>25 that reported to her. The inventory clerks, surely.</p>	<p style="text-align: right;">Page 32</p> <p>1 R. KOHN</p> <p>2 Peter Lazar?</p> <p>3 A. I do.</p> <p>4 Q. Who is Peter Lazar?</p> <p>5 A. Peter, I believe, today is the mid-shift</p> <p>6 manager in the Syosset returns dock.</p> <p>7 Q. When was Mr. Lazar hired?</p> <p>8 A. Maybe five years ago.</p> <p>9 Q. Would that have been in 2016?</p> <p>10 A. This is Roy answering?</p> <p>11 Q. Yes.</p> <p>12 A. I do not know. Roughly five years ago.</p> <p>13 Q. Who was he hired to replace? Again, this is</p> <p>14 if you know.</p> <p>15 A. I think he was not hired to replace anyone.</p> <p>16 I believe he was hired to bolster the organization</p> <p>17 and bring in additional management.</p> <p>18 Q. Do you know what title he was hired into?</p> <p>19 A. I believe it was mid-shift manager or</p> <p>20 mid-shift warehouse manager.</p> <p>21 Q. Did anyone besides Maria have disciplinary</p> <p>22 authority over inventory control clerks, otherwise</p> <p>23 known as cycle counters, before she left the</p> <p>24 company?</p> <p>25 A. I am sure anyone in a managerial position, a</p>

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<p style="text-align: right;">Page 33</p> <p>1 R. KOHN</p> <p>2 position of authority, would have disciplinary</p> <p>3 opportunities with the inventory control clerks or</p> <p>4 cycle counters.</p> <p>5 Q. Was she considered their direct manager for</p> <p>6 the purposes of discipline before she left the</p> <p>7 company?</p> <p>8 A. Yes. I think she would recommend discipline</p> <p>9 to her manager, John Wilkinson.</p> <p>10 Q. So she would recommend something to John</p> <p>11 Wilkinson.</p> <p>12 Could she take any steps herself to monitor</p> <p>13 an employee's performance or to discipline them?</p> <p>14 MS. CABRERA: Objection to the form of</p> <p>15 the question.</p> <p>16 You can answer.</p> <p>17 A. Would you repeat that?</p> <p>18 Q. Before Maria left the company when she was</p> <p>19 the WMI administrator, she would make</p> <p>20 recommendations to John Wilkinson about discipline,</p> <p>21 correct?</p> <p>22 A. Yes. I think most people make</p> <p>23 recommendations upstream.</p> <p>24 Q. Did she have the authority to discipline any</p> <p>25 of the inventory control clerks without</p>	<p style="text-align: right;">Page 35</p> <p>1 R. KOHN</p> <p>2 whether or not she was an exempt executive?</p> <p>3 A. Can I refer to my notes?</p> <p>4 Q. Of course you can.</p> <p>5 MS. CABRERA: And you can look at</p> <p>6 whatever he looks at, obviously. Just for</p> <p>7 the record we are now officially in 30(b)(6)</p> <p>8 territory.</p> <p>9 MR. MOSER: Yes.</p> <p>10 A. As I mentioned a few moments ago Maria's</p> <p>11 duties, her primary duty was managing the inventory</p> <p>12 control department. She customarily directed the</p> <p>13 work of the inventory control counters.</p> <p>14 Q. Are you referring to notes that you referred</p> <p>15 to in preparing for today's deposition?</p> <p>16 A. Yes.</p> <p>17 Q. May I see those?</p> <p>18 A. Absolutely.</p> <p>19 Q. After Maria became WMI administrator, did she</p> <p>20 have the authority to hire or fire any employees</p> <p>21 without approval?</p> <p>22 A. Very few people in the organization had or</p> <p>23 have the authority to fire employees without</p> <p>24 approval.</p> <p>25 Q. Was she one of those individuals?</p>
<p style="text-align: right;">Page 34</p> <p>1 R. KOHN</p> <p>2 Mr. Wilkinson's approval?</p> <p>3 A. I think in today's environment or in the</p> <p>4 environment during 2018-ish, I think all of us</p> <p>5 discussed disciplinary opportunities and actions</p> <p>6 with our superiors in conjunction with HR.</p> <p>7 Q. So do you know whether Maria Suarez was</p> <p>8 considered an exempt employee? By exempt employee I</p> <p>9 mean someone who was not paid overtime.</p> <p>10 A. Yes. She was not paid overtime.</p> <p>11 Q. Do you know what factors can be considered in</p> <p>12 determining whether or not a person is exempt for</p> <p>13 overtime?</p> <p>14 A. She managed the inventory control department,</p> <p>15 a recognized department. Her voice was heard and</p> <p>16 respected if she made recommendations for discipline</p> <p>17 and this group of inventory and cycle counters</p> <p>18 reported to her. She was responsible for them.</p> <p>19 Q. So do you know what factors can be considered</p> <p>20 in determining whether an individual is an exempt</p> <p>21 executive?</p> <p>22 A. I believe I named a few. I believe she also</p> <p>23 was more clerical, less physical in her functioning.</p> <p>24 Q. I just want to go through now the factors</p> <p>25 that you believe can be considered in determining</p>	<p style="text-align: right;">Page 36</p> <p>1 R. KOHN</p> <p>2 A. No, but her voice carried a particular</p> <p>3 weight.</p> <p>4 Q. What weight did it carry?</p> <p>5 A. If Maria made recommendations on someone's</p> <p>6 performance to her manager, her manager considered</p> <p>7 it.</p> <p>8 Q. How do you know that?</p> <p>9 A. That is the way the organization works.</p> <p>10 Q. Other than the fact that that is how the</p> <p>11 organization works, do you have any other reason to</p> <p>12 believe John Wilkinson was listening to her?</p> <p>13 A. Yes. John Wilkinson supported Maria more</p> <p>14 than anyone else in the organization.</p> <p>15 Q. Other than the fact that John Wilkinson</p> <p>16 supported Maria more than anyone else in the</p> <p>17 organization and other than this is the way things</p> <p>18 are generally done, is there any other reason you</p> <p>19 believe John Wilkinson was taking her</p> <p>20 recommendations to hire and fire people seriously?</p> <p>21 A. Absolutely. When she asked for an additional</p> <p>22 cycle counter at one point in time, John Wilkinson</p> <p>23 agreed to hiring an additional cycle counter.</p> <p>24 Q. When was that?</p> <p>25 A. Sometime during her tenure.</p>

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<p style="text-align: right;">Page 37</p> <p>1 R. KOHN</p> <p>2 Q. Do you recall when?</p> <p>3 A. To give you an exact date, I have to refer to</p> <p>4 additional documents. I would say sometime within</p> <p>5 her last year to 18 months of employment.</p> <p>6 Q. How do you know she asked for an additional</p> <p>7 cycle counter?</p> <p>8 A. I believe it is in the documentation.</p> <p>9 Q. Can you please identify where in the</p> <p>10 documentation it is?</p> <p>11 MS. CABRERA: Off the record.</p> <p>12 (Whereupon, a discussion was held off the</p> <p>13 record.)</p> <p>14 (Whereupon, Notes were marked as</p> <p>15 Plaintiff's Exhibit 24, for identification,</p> <p>16 as of this date.)</p> <p>17 (Whereupon, Notes were marked as</p> <p>18 Plaintiff's Exhibit 25, for identification,</p> <p>19 as of this date.)</p> <p>20 (Whereupon, Email chain was marked as</p> <p>21 Plaintiff's Exhibit 26, for identification,</p> <p>22 as of this date.)</p> <p>23 Q. So I am going to show you what was marked as</p> <p>24 Plaintiff's Exhibit 26 for identification.</p> <p>25 Is that the email that suggests that Maria</p>	<p style="text-align: right;">Page 39</p> <p>1 R. KOHN</p> <p>2 front of us right now.</p> <p>3 Q. When you say there may be, do you know of any</p> <p>4 other documents or the existence of any other</p> <p>5 documents that would show she had a voice in whether</p> <p>6 or not new cycle counters were hired?</p> <p>7 A. At this point in time, I am aware of this</p> <p>8 document before us.</p> <p>9 Q. As you sit here today, are you aware of any</p> <p>10 other document that exists that would suggest</p> <p>11 Maria --</p> <p>12 A. I don't think any other documents are</p> <p>13 required. I think this document shows her voice was</p> <p>14 heard from her manager, and her manager and human</p> <p>15 resources listened to what Maria said and went</p> <p>16 forward with her recommendation.</p> <p>17 Q. Other than this document, are you aware of</p> <p>18 any other documents that would suggest she had a</p> <p>19 voice in whether or not cycle counters were hired?</p> <p>20 A. Can we look for the September 2016 counseling</p> <p>21 memo?</p> <p>22 MS. CABRERA: Is that what you are saying</p> <p>23 you need to refresh your recollection?</p> <p>24 THE WITNESS: Yes. I believe it was</p> <p>25 called WMI Administrator Expectation</p>
<p style="text-align: right;">Page 38</p> <p>1 R. KOHN</p> <p>2 could ask for additional cycle counters?</p> <p>3 A. Yes. This is one of them.</p> <p>4 Q. Are there any other documents that show</p> <p>5 whether or not she would ask for cycle counters?</p> <p>6 A. I believe there was a conversation in</p> <p>7 September 2016 that resulted in a list of discussion</p> <p>8 points as well, but this one clearly says there was</p> <p>9 a need for another cycle counter.</p> <p>10 Q. Are there any other documents that showed she</p> <p>11 had the ability to ask for additional cycle counters</p> <p>12 to be hired other than this document?</p> <p>13 A. I think the purpose of this document was to</p> <p>14 answer a question was her voice heard and did she</p> <p>15 have authority to promote hiring or termination of</p> <p>16 other employees, and I think this corresponds with</p> <p>17 that conversation showing she met with her boss, she</p> <p>18 expressed the need for an additional cycle counter,</p> <p>19 and Mr. Wilkinson heard that request and went to HR</p> <p>20 and went forward with it.</p> <p>21 Q. Are there any other documents which suggest</p> <p>22 she had a voice in asking for additional cycle</p> <p>23 counters to be hired, other than this particular</p> <p>24 document?</p> <p>25 A. There may be, but this is the one we have in</p>	<p style="text-align: right;">Page 40</p> <p>1 R. KOHN</p> <p>2 Counseling Session.</p> <p>3 A. That would be the only other document I would</p> <p>4 anticipate had the request for a cycle counter or</p> <p>5 additional support.</p> <p>6 MR. MOSER: I believe I found it. 2027,</p> <p>7 2028, and 2029. It may exist in another</p> <p>8 form. I am going to show the witness what is</p> <p>9 on my screen. We will deem it marked as</p> <p>10 Plaintiff's Exhibit 27.</p> <p>11 Q. Perhaps that is what you are talking about.</p> <p>12 Please feel free to scroll up and down. Why don't</p> <p>13 you read the document beginning on page 2027.</p> <p>14 A. Okay. So this document does not ask for</p> <p>15 another cycle counter, but it does direct her to --</p> <p>16 that she is responsible for the work assignments, to</p> <p>17 give work assignments and direction to all the cycle</p> <p>18 counters, all disciplinary issues, forward them to</p> <p>19 the day shift manager. This is what we would all</p> <p>20 do, go to our next level manager with discipline.</p> <p>21 Q. You are reading from SGWS2028, correct?</p> <p>22 A. Yes.</p> <p>23 MR. MOSER: Can we stipulate for the</p> <p>24 record we will mark the Performance</p> <p>25 Improvement Plan dated September 22, 2016,</p>

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<p style="text-align: right;">Page 41</p> <p>1 R. KOHN</p> <p>2 which begins on SGWS2027 and ends on SGWS2029</p> <p>3 as Exhibit 27.</p> <p>4 MS. CABRERA: So stipulated.</p> <p>5 (Whereupon, Performance Improvement Plan</p> <p>6 9/22/16 was deemed marked as Plaintiff's</p> <p>7 Exhibit 27, for identification, as of this</p> <p>8 date.)</p> <p>9 Q. So I am going to read this into the record.</p> <p>10 It lists under Responsibilities, As the WMI</p> <p>11 administrator, you are responsible for work</p> <p>12 assignment and direction to all cycle counters. All</p> <p>13 disciplinary issues need to be addressed to the day</p> <p>14 shift warehouse manager.</p> <p>15 Who was the day shift manager? Was that</p> <p>16 Barry Finkelstein?</p> <p>17 A. I believe so, yes.</p> <p>18 Q. Why would she be addressing disciplinary</p> <p>19 issues with Barry Finkelstein?</p> <p>20 A. What was the date of the memo?</p> <p>21 Q. The date of the memo is September 22, 2016.</p> <p>22 A. To express her opinion on the individuals</p> <p>23 that she thought required progressive discipline.</p> <p>24 Q. Was she their manager?</p> <p>25 A. She was there superior for sure.</p>	<p style="text-align: right;">Page 43</p> <p>1 R. KOHN</p> <p>2 time frame, to be aware of what was happening in his</p> <p>3 example facility.</p> <p>4 Q. So did Maria report to Barry Finkelstein?</p> <p>5 A. No. Maria reported to John Wilkinson.</p> <p>6 Q. So Barry Finkelstein was at her level in the</p> <p>7 overall structure?</p> <p>8 A. No. Barry Finkelstein had a more elevated</p> <p>9 position of responsibility for the entire shift.</p> <p>10 Q. But she did not report to Barry Finkelstein?</p> <p>11 A. Correct. She reported to John Wilkinson.</p> <p>12 Q. It is just that individuals who worked for</p> <p>13 her, she would have to go to Barry Finkelstein to</p> <p>14 address disciplinary issues?</p> <p>15 A. Late 2016 Maria's performance was degrading</p> <p>16 to the point where she was put on the pit in January</p> <p>17 of '17. When someone's performance is degrading,</p> <p>18 you want to make sure that you listen to their</p> <p>19 recommendations because you want to have that</p> <p>20 checked by someone else in the facility. This</p> <p>21 individual, Barry Finkelstein, was the day manager.</p> <p>22 Q. Who made the decision to direct Maria to</p> <p>23 address any disciplinary issues with Barry</p> <p>24 Finkelstein?</p> <p>25 A. You just read a memo from John Wilkinson.</p>
<p style="text-align: right;">Page 42</p> <p>1 R. KOHN</p> <p>2 Q. Was she their manager?</p> <p>3 A. She was the WMI administrator.</p> <p>4 Q. Did she have managerial authority over the</p> <p>5 inventory control clerks?</p> <p>6 A. She was their superior, yes.</p> <p>7 Q. Why would she have to go to someone else for</p> <p>8 discipline of employees who worked under her?</p> <p>9 A. I think I said earlier we all do that. If I</p> <p>10 was going to discipline one of my direct reports, I</p> <p>11 would bring it uphill to my manager.</p> <p>12 Q. That would be voluntary, correct? That is</p> <p>13 something voluntary you do?</p> <p>14 A. No. We involve our managers and human</p> <p>15 resources in all labor issues.</p> <p>16 Q. It says here all disciplinary issues need to</p> <p>17 be addressed to the dayshift warehouse manager. It</p> <p>18 does not mention human resource, right? It just</p> <p>19 says any disciplinary issues need to be addressed by</p> <p>20 the day shift warehouse manager, which was Barry</p> <p>21 Finkelstein. Why?</p> <p>22 A. Well, that is John's report.</p> <p>23 Q. Correct.</p> <p>24 A. I am sure John wanted the day shift manager,</p> <p>25 the person responsible for the facility during that</p>	<p style="text-align: right;">Page 44</p> <p>1 R. KOHN</p> <p>2 Q. Yes, but that is not my question.</p> <p>3 My question is: Who made this decision?</p> <p>4 A. When you operate a facility 24 hours a day,</p> <p>5 five to seven days a week, whoever is the highest</p> <p>6 person in charge on that shift needs to be aware of</p> <p>7 what is going on during that shift. If there was</p> <p>8 discipline on a different shift, the facility</p> <p>9 manager of that shift would be informed of something</p> <p>10 that happened on his or her shift.</p> <p>11 Q. Who made the decision, and I will read this</p> <p>12 in again, who made the decision that all</p> <p>13 disciplinary issues need to be addressed by Barry</p> <p>14 Finkelstein when it comes to cycle counters?</p> <p>15 A. Can I see the phrase?</p> <p>16 Q. Sure.</p> <p>17 A. By Barry or --</p> <p>18 Q. Well, we established it is the mid-shift</p> <p>19 manager. You testified that is Barry Finkelstein,</p> <p>20 so my question is: Who made that decision?</p> <p>21 A. Well, first, let me correct that. I think</p> <p>22 what you read was, As the WMI administrator, you are</p> <p>23 responsible for work assignments and direction to</p> <p>24 all cycle counters. I believe you said, all</p> <p>25 disciplinary issues need to be addressed by the day</p>

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<p style="text-align: right;">Page 45</p> <p>1 R. KOHN</p> <p>2 shift manager. It says to the day shift manager,</p> <p>3 addressed to the day shift manager, letting the</p> <p>4 person in charge know what is going on during the</p> <p>5 period of time the facility is under that</p> <p>6 individual's control.</p> <p>7 Q. So for you there is a difference by and to?</p> <p>8 If someone had used the word by versus to, they</p> <p>9 would signify something different?</p> <p>10 A. Of course.</p> <p>11 Q. If we used the word by, what would that</p> <p>12 signify to you?</p> <p>13 A. That is not what it says.</p> <p>14 Q. I know.</p> <p>15 A. If it said by the day shift manager, the</p> <p>16 connotation would be the manager is making the</p> <p>17 decision. If it says to the day shift manager, the</p> <p>18 connotation is you are reporting something, you are</p> <p>19 going to discuss it, there is going to be a</p> <p>20 collaborative interactive process, and you are going</p> <p>21 to come out with a result. The letter says to the</p> <p>22 day shift manager. That is my understanding.</p> <p>23 Q. Who made the decision that all disciplinary</p> <p>24 issues needed to be addressed to the day shift</p> <p>25 warehouse manager?</p>	<p style="text-align: right;">Page 47</p> <p>1 R. KOHN</p> <p>2 company through her manager John Wilkinson and</p> <p>3 through HR Beth Toohig, they wanted to make sure if</p> <p>4 she was going to recommend something or bring</p> <p>5 something forward, it was done properly.</p> <p>6 Q. Was there any documentation of her</p> <p>7 mismanagement of any employees?</p> <p>8 MS. CABRERA: Objection.</p> <p>9 You can answer.</p> <p>10 A. Not that I am aware of.</p> <p>11 Q. Were the cycle counters made aware that</p> <p>12 disciplinary issues needed to be addressed to Barry</p> <p>13 Finkelstein?</p> <p>14 A. I'm not sure that is relevant.</p> <p>15 MR. MOSER: Read back the question.</p> <p>16 (Whereupon, the record was read by the</p> <p>17 reporter.)</p> <p>18 MS. CABRERA: I am going to note my</p> <p>19 objection on the record, that that question</p> <p>20 is beyond the 30(b)(6) notice. So the</p> <p>21 witness can answer as a fact witness, but not</p> <p>22 as the corporate rep.</p> <p>23 A. Considering that I would not know whether the</p> <p>24 inventory control clerks, cycle counters, were made</p> <p>25 aware that Maria was asked to discuss discipline</p>
<p style="text-align: right;">Page 46</p> <p>1 R. KOHN</p> <p>2 A. If the letter was authored by John Wilkinson,</p> <p>3 I would say John Wilkinson and Beth Toohig, the vice</p> <p>4 president of human resources.</p> <p>5 Q. Do you know why?</p> <p>6 A. I think this was an expectation memo. It was</p> <p>7 clarifying duties, roles, responsibilities; and I</p> <p>8 think if the manager and the vice president of human</p> <p>9 resources could help clarify something, that could</p> <p>10 only benefit the employee.</p> <p>11 MR. MOSER: Can you read back my</p> <p>12 question, please.</p> <p>13 (Whereupon, the record was read by the</p> <p>14 reporter.)</p> <p>15 Q. Other than what you have stated, is there any</p> <p>16 other reason why John Wilkinson and perhaps Beth</p> <p>17 Toohig decided that with regard to Maria all</p> <p>18 disciplinary issues need to be addressed to the day</p> <p>19 shift warehouse manager, who at the time was Barry</p> <p>20 Finkelstein?</p> <p>21 A. Other than what I have already stated?</p> <p>22 Q. Yes.</p> <p>23 A. I would assume, I believe, that this was one</p> <p>24 of the low points in Maria's performance and as she</p> <p>25 was going through her day-to-day activities, the</p>	<p style="text-align: right;">Page 48</p> <p>1 R. KOHN</p> <p>2 with the shift manager.</p> <p>3 Q. So do you know, as you sit here today,</p> <p>4 whether or not the cycle counters were made aware</p> <p>5 that all disciplinary issues needed to be addressed</p> <p>6 to the day shift manager?</p> <p>7 A. I believe I just answered that.</p> <p>8 Q. So are you aware whether or not the cycle</p> <p>9 counters were made aware that all disciplinary</p> <p>10 issues needed to be addressed to the day shift</p> <p>11 warehouse manager who was Barry Finkelstein?</p> <p>12 A. No. I am not aware. I believe I said that</p> <p>13 several times.</p> <p>14 MR. MOSER: Let's mark this email chain</p> <p>15 as Plaintiff's Exhibit 28 and the Response as</p> <p>16 Exhibit 29.</p> <p>17 (Whereupon, Email chain was marked as</p> <p>18 Plaintiff's Exhibit 28, for identification,</p> <p>19 as of this date.)</p> <p>20 (Whereupon, Response was marked as</p> <p>21 Plaintiff's Exhibit 29, for identification,</p> <p>22 as of this date.)</p> <p>23 MR. MOSER: For the record I am showing</p> <p>24 witness and counsel what has been marked as</p> <p>25 Plaintiff's Exhibit 28 for identification.</p>

12 (Pages 45 to 48)

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<p>1 R. KOHN</p> <p>2 A. Okay.</p> <p>3 Q. Have you seen this document before today?</p> <p>4 A. My name is on it from August 2016.</p> <p>5 Q. Is this an email chain, an internal email</p> <p>6 chain, at Southern?</p> <p>7 A. Yes.</p> <p>8 Q. Now, when we go to the second page, that says</p> <p>9 2258?</p> <p>10 A. Yes.</p> <p>11 Q. Correct me if I'm wrong, this is from Barry</p> <p>12 Finkelstein. This is an email from Barry</p> <p>13 Finkelstein to Kevin Randall CCing John Wilkinson</p> <p>14 and Maria Suarez saying the four inventory team</p> <p>15 members just informed that they are going to HR now.</p> <p>16 They did not share the reason with me.</p> <p>17 Do you know why the team members were</p> <p>18 informing Barry Finkelstein that they were going to</p> <p>19 HR?</p> <p>20 A. If I read further, I can decipher that, but</p> <p>21 the memo is not just to Kevin Randall. It is also</p> <p>22 to Elizabeth Toohig. You omitted her name.</p> <p>23 Q. Understood. Yes.</p> <p>24 A. When I read the chain it appears that if they</p> <p>25 have a desk in the warehouse, they want to be</p>	<p>1 R. KOHN</p> <p>2 employees wanting to go to HR to talk to the HR lead</p> <p>3 all while 40 people from across the country are</p> <p>4 there to train them. One of the bullet points says,</p> <p>5 Not sure what to do each day and no one is training</p> <p>6 them. Now, I was there. Kevin Randall was there.</p> <p>7 Beth Toohig was there. John Wilkinson was there.</p> <p>8 Barry Finkelstein was there and 40 people that were</p> <p>9 the top of their grade, top of their class, came to</p> <p>10 this facility from across America to train them. So</p> <p>11 buried in these five bullet points is surely a</p> <p>12 little confusion. If one employee does not want to</p> <p>13 work from 9:00 to 5:00 and another one says they</p> <p>14 don't know what to do each day, no one is training</p> <p>15 them, no one knows who they report to or if they</p> <p>16 have a desk in the warehouse, they should be</p> <p>17 considered 40-hour workers, i.e., warehouse</p> <p>18 employees and they feel harassed. That was</p> <p>19 something the group brought to HR.</p> <p>20 Q. Do you know why Barry Finkelstein was the one</p> <p>21 who advised HR and everyone else about the fact they</p> <p>22 were going there?</p> <p>23 A. No, I do not.</p> <p>24 Q. Did he have disciplinary authority over the</p> <p>25 inventory control clerks at the time he sent this</p>
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<p>1 R. KOHN</p> <p>2 considered warehouse workers with a 40-hour week as</p> <p>3 opposed to clerical workers with a 35-hour week.</p> <p>4 Q. It says here in the middle of page 2257,</p> <p>5 correct me if I'm wrong, this is an email from</p> <p>6 Elizabeth Toohig to you?</p> <p>7 A. You cannot decipher that by the email. It</p> <p>8 could be to everyone on the email.</p> <p>9 Q. Well, I am not saying it is only to you, but</p> <p>10 was this email sent to you?</p> <p>11 A. It appears that way, yes.</p> <p>12 Q. Because you responded to it, correct?</p> <p>13 A. Yes.</p> <p>14 Q. Elizabeth Toohig advised you if we look at</p> <p>15 number 2, no one knows who they report to?</p> <p>16 A. In the email before that when I asked Ms.</p> <p>17 Toohig what this as about, she came back with five</p> <p>18 bullet points. So she is restating what they said.</p> <p>19 Q. She is saying they don't know who they report</p> <p>20 to, correct?</p> <p>21 A. That is what this says, correct.</p> <p>22 Q. Did you provide any clarification as in your</p> <p>23 response as to who these individual control clerks</p> <p>24 report to?</p> <p>25 A. I think this is a chain that describes</p>	<p>1 R. KOHN</p> <p>2 email?</p> <p>3 A. No. This appears they went to him and said</p> <p>4 we would like to go to HR. It doesn't point to</p> <p>5 authority over anyone. This points to he ran the</p> <p>6 shift. They went to the shift manager and said we</p> <p>7 would like to go to HR. They didn't share the</p> <p>8 reason with me.</p> <p>9 Q. Do you know why they went to Barry</p> <p>10 Finkelstein with this?</p> <p>11 A. No, no. Maybe Maria was not in the building.</p> <p>12 It is very unclear. This is a snapshot in time.</p> <p>13 Q. So was Maria supposed to be in the building</p> <p>14 on August 3, 2016, at 10:33 a.m.?</p> <p>15 MS. CABRERA: Objection.</p> <p>16 You can answer.</p> <p>17 A. Today we would have no idea of knowing</p> <p>18 whether Maria was in the building on August 3, 2016,</p> <p>19 at 10:33 a.m.</p> <p>20 Q. Did you clarify in response to this email</p> <p>21 from Beth Toohig who the four inventory team members</p> <p>22 reported to?</p> <p>23 A. It was very clear at this time and before,</p> <p>24 and for a period of time after this, the inventory</p> <p>25 control clerks reported to Maria Suarez. It is</p>

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<p style="text-align: right;">Page 53</p> <p>1 R. KOHN</p> <p>2 abundantly and profoundly clear. Everyone knew they</p> <p>3 reported to Maria Suarez.</p> <p>4 Q. Except for the inventory clerks themselves?</p> <p>5 A. I disagree with that.</p> <p>6 Q. So you think they were making that up?</p> <p>7 A. No. I think there were 40 people in the</p> <p>8 building trying to get people schooled and trained</p> <p>9 on an new system, and each of those 40 people may</p> <p>10 have been communicating with the inventory control</p> <p>11 clerks, with other people, with management, with</p> <p>12 Maria all the way up the chain, and maybe they</p> <p>13 didn't know who to listen to in regards to those 40</p> <p>14 people, not on a daily basis with their direct</p> <p>15 report of Maria Suarez.</p> <p>16 Q. On August 4, 2016, there were 40 visits in</p> <p>17 the building?</p> <p>18 A. Absolutely. I think I spoke earlier. Any</p> <p>19 time there is a Go Live situation, whether it be</p> <p>20 software, hardware, sortation, conveyer, the company</p> <p>21 brings in the experts from across the county to come</p> <p>22 in and train people, to shorten the learning curve,</p> <p>23 and to get the local site up and running as quickly</p> <p>24 as possible and to diminish the disruption to the</p> <p>25 marketplace. We don't want our customers to suffer</p>	<p style="text-align: right;">Page 55</p> <p>1 R. KOHN</p> <p>2 A. There is prescribed progressive discipline</p> <p>3 for different tracks. There would be a track for</p> <p>4 attendance, there could be a track for work rule</p> <p>5 violations, and there are violations that could skip</p> <p>6 steps of progressive discipline. There are</p> <p>7 violations that are cause for immediate termination.</p> <p>8 MR. MOSER: We will take a break.</p> <p>9 (Whereupon, a recess was taken at this</p> <p>10 time.)</p> <p>11 MR. MOSER: For the record we marked</p> <p>12 Plaintiff's Exhibits 24 and 25.</p> <p>13 Q. Can you tell me what these are?</p> <p>14 A. These were notes I reviewed with counsel</p> <p>15 about the factual basis for the defendant's</p> <p>16 assertion that the plaintiff was exempt.</p> <p>17 Q. Did you review any other documents regarding</p> <p>18 Southern's assertion that the plaintiff was exempt?</p> <p>19 A. No.</p> <p>20 Q. When a manager issues a written warning to an</p> <p>21 employee, is the manager supposed to sign it?</p> <p>22 A. I think it depends on the form. If it comes</p> <p>23 out in a printed document, it is always good</p> <p>24 practice for the manager and the employee to sign</p> <p>25 the form.</p>
<p style="text-align: right;">Page 54</p> <p>1 R. KOHN</p> <p>2 if we are going to go through a software transition.</p> <p>3 So if one of the statements was they don't know who</p> <p>4 they report to, it might be because there were a lot</p> <p>5 of people there all teaching them something at the</p> <p>6 same time.</p> <p>7 Q. So it is just coincidence that Barry</p> <p>8 Finkelstein, who had disciplinary authority over the</p> <p>9 inventory team members in late 2016, advised HR that</p> <p>10 they were actually going to HR?</p> <p>11 MS. CABRERA: Objection.</p> <p>12 You can answer.</p> <p>13 A. It appears that Barry notified his manager</p> <p>14 Kevin Randall and Beth Toohig, the VP of HR, that</p> <p>15 the cycle counters were coming now. So he followed</p> <p>16 the chain of command and told his manager and</p> <p>17 included HR because apparently they were on the way.</p> <p>18 They didn't share the reason.</p> <p>19 Q. Now, what are the steps for disciplining a</p> <p>20 union employee, let's say, someone who is a member</p> <p>21 of Local 1, at the Syosset facility?</p> <p>22 MS. CABRERA: I just want to note my</p> <p>23 objection. This is beyond the 30(b)(6)</p> <p>24 notice. So the witness can testify as a fact</p> <p>25 witness.</p>	<p style="text-align: right;">Page 56</p> <p>1 R. KOHN</p> <p>2 Q. Now, if we go back to the last exhibit, which</p> <p>3 is Exhibit 28, does it look like the inventory</p> <p>4 department is doing their job?</p> <p>5 A. I don't think that can be deciphered from</p> <p>6 this particular document.</p> <p>7 Q. I am going to read the first couple of</p> <p>8 sentences. Their direction is very clear. They are</p> <p>9 to reconcile WMI to Sapphire daily. They are doing</p> <p>10 very little. In three hours yesterday, Justin</p> <p>11 counted two items then went to his office.</p> <p>12 So from that you cannot determine whether or</p> <p>13 not they were doing their jobs?</p> <p>14 A. I apologize. I thought when you asked were</p> <p>15 they doing their job, were they doing their job by</p> <p>16 notifying someone they wanted to go to HR. No.</p> <p>17 Absolutely. And for me to respond to this email at</p> <p>18 9:00 at night -- oh, 8:00 in the morning. I think</p> <p>19 word for word the direction is clear, they are doing</p> <p>20 very little. In three hours if someone counted two</p> <p>21 items, that is an issue. That is clearly an issue.</p> <p>22 Q. Did the inventory department continue to have</p> <p>23 performance issues for some period of time after the</p> <p>24 implementation of WMI?</p> <p>25 A. When you say inventory department, do you</p>

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<p style="text-align: right;">Page 57</p> <p>1 R. KOHN</p> <p>2 mean the counters?</p> <p>3 Q. Yes. The cycle counters.</p> <p>4 A. I think this is extreme. I think two items</p> <p>5 in three hours is extreme.</p> <p>6 Q. I know this is an extreme example, but after</p> <p>7 this did they continue to have performance issues,</p> <p>8 the cycle counters?</p> <p>9 A. For some time, yes.</p> <p>10 Q. Are there any documents -- I know we have</p> <p>11 other documents actually describing Maria's role --</p> <p>12 are there any documents which shows that she</p> <p>13 actually counseled one of the inventory control</p> <p>14 clerks?</p> <p>15 A. That the company counseled or I counseled.</p> <p>16 Q. Are there any documents that show that Maria</p> <p>17 counseled one of the inventory control clerks?</p> <p>18 A. I have not seen any in preparing for</p> <p>19 deposition.</p> <p>20 Q. Are there any documents in existence which</p> <p>21 show Maria counseled any of the inventory control</p> <p>22 clerks during the period of time she was the WMI</p> <p>23 administrator?</p> <p>24 A. I have not seen any in preparing for the</p> <p>25 deposition.</p>	<p style="text-align: right;">Page 59</p> <p>1 R. KOHN</p> <p>2 have been asked why something was not reconciled.</p> <p>3 On a daily basis, it was Maria's goal to balance the</p> <p>4 inventory between Sapphire and WMI. She had a staff</p> <p>5 that did that work. She assigned the tasks required</p> <p>6 to get that completed.</p> <p>7 Q. Are there any documents which actually show</p> <p>8 her actually assigning work to these individuals?</p> <p>9 A. Daily work product?</p> <p>10 Q. Where are those records?</p> <p>11 A. No. I am asking. You are looking for daily</p> <p>12 work product?</p> <p>13 Q. I am looking for any document which actually</p> <p>14 shows that she assigned work?</p> <p>15 A. You are asking for a document that would have</p> <p>16 likely been discarded by the counter after they</p> <p>17 completed the assignment.</p> <p>18 Q. So after the counter discarded the</p> <p>19 assignment, there would be no record that Maria had</p> <p>20 assigned the work to them?</p> <p>21 A. Each day Maria had a group of tasks that</p> <p>22 needed to be completed. From the time inventory</p> <p>23 came into the building, it had to be received</p> <p>24 properly. When it was transferred around the</p> <p>25 building, it had to be transferred properly from and</p>
<p style="text-align: right;">Page 58</p> <p>1 R. KOHN</p> <p>2 Q. Do you know whether any exist?</p> <p>3 A. I have not seen any in preparing for the</p> <p>4 deposition.</p> <p>5 Q. Do you know if any exist?</p> <p>6 A. I would not know. I have not seen any in</p> <p>7 preparing for the deposition.</p> <p>8 Q. Are there any documents that show that she</p> <p>9 was actually assigning them the work. I am not</p> <p>10 talking about second-hand documents, which relay the</p> <p>11 fact that she should be assigning work. I mean,</p> <p>12 documents which actually show that she was assigning</p> <p>13 work to the cycle counters?</p> <p>14 A. Maria assigned work to the cycle counters</p> <p>15 while she was the warehouse inventory manager in a</p> <p>16 manual system and after she became the WMI</p> <p>17 administrator. It was her job to assign work to the</p> <p>18 counters.</p> <p>19 Q. Are there any documents that actually show,</p> <p>20 Listen, I am telling Maria, I am telling you,</p> <p>21 Justin, to do this? Anything that shows she gave</p> <p>22 direction to Justin Vey?</p> <p>23 A. As their superior, their manager, she</p> <p>24 assigned work to them on a daily basis. It may have</p> <p>25 been a form that said go count these items. It may</p>	<p style="text-align: right;">Page 60</p> <p>1 R. KOHN</p> <p>2 to locations. When orders were consolidated at</p> <p>3 night, inventory needed to be transferred to the</p> <p>4 pick lines to be shipped. If orders were delivered</p> <p>5 and they came back from the return stock, inventory</p> <p>6 would have to be transferred back into a location.</p> <p>7 All of that was handled by Maria and her team. So</p> <p>8 if there are thousands of transactions a day, it</p> <p>9 would be very unlikely that someone would have a</p> <p>10 piece of paper from five years ago that pointed to</p> <p>11 what their tasks were for that particular day or</p> <p>12 hour or shift.</p> <p>13 MR. MOSER: Can you read back the</p> <p>14 question, please.</p> <p>15 (Whereupon, the record was read by the</p> <p>16 reporter.)</p> <p>17 A. Well, I can give you an example. Pre-WMI,</p> <p>18 during physical inventories, people went out and</p> <p>19 counted locations manually pre-WMI. Maria would</p> <p>20 give dock count sheets to cycle counters that would</p> <p>21 go out and count that location or a series or</p> <p>22 locations. It is improbable that those documents</p> <p>23 have been maintained for five or six years. You are</p> <p>24 asking for pieces of paper that are daily work</p> <p>25 product, and that would not be saved under any</p>

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<p style="text-align: right;">Page 61</p> <p>1 R. KOHN</p> <p>2 circumstances. Maria directed the work force on a</p> <p>3 daily basis, assigned all of their work from the</p> <p>4 moment they came in until the moment they left.</p> <p>5 What was not completed stayed in the queue so Maria</p> <p>6 can assign the leftover work and any new work the</p> <p>7 following morning.</p> <p>8 Q. So once the cycle counters discarded the</p> <p>9 paperwork that was given to them, would there be any</p> <p>10 record that Maria had actually delegated them work?</p> <p>11 A. Forgive me, but I believe you are insinuating</p> <p>12 Maria did not assign them work.</p> <p>13 Q. No. I am asking a question, whether you take</p> <p>14 that to mean something else, I am asking a very</p> <p>15 simple question.</p> <p>16 My simple question is: Once those cycle</p> <p>17 counters discarded the piece of paper, was there any</p> <p>18 direct evidence that Maria had delegated work to</p> <p>19 them?</p> <p>20 MS. CABRERA: Objection. I'm sorry.</p> <p>21 Before you kept saying if there were any</p> <p>22 documents. Now you are saying is there</p> <p>23 direct evidence.</p> <p>24 MR. MOSER: Okay.</p> <p>25 Q. Once they discarded these assignments that</p>	<p style="text-align: right;">Page 63</p> <p>1 R. KOHN</p> <p>2 A. Maria was responsible for the cycle counters.</p> <p>3 The cycle counters reported to Maria. Maria</p> <p>4 assigned them work and they completed the work that</p> <p>5 she assigned to them.</p> <p>6 Q. Is there any record of the actual work she</p> <p>7 assigned to them as the WMI administrator?</p> <p>8 A. When she was the WMI administrator everything</p> <p>9 was scanned. If they went to the cycle counter</p> <p>10 location or a series of locations, they would have</p> <p>11 scanned into that location, entered the count,</p> <p>12 closed out the location and their quotes,</p> <p>13 fingerprints would have been attached to that</p> <p>14 reconciled item. So as they were directed to</p> <p>15 complete work, yes. Systematically, every move they</p> <p>16 made, everything that was touched, everything that</p> <p>17 was transferred, everything that was moved forward,</p> <p>18 would have had a fingerprint of the cycle counters.</p> <p>19 Q. Would it have a fingerprint showing that</p> <p>20 Maria had given them the work to do?</p> <p>21 A. No, but they would not have had the work on</p> <p>22 their own. The work would not have mysteriously</p> <p>23 appeared for them. They would have had to have been</p> <p>24 assigned the work.</p> <p>25 Q. Is there any record other than the fact that</p>
<p style="text-align: right;">Page 62</p> <p>1 R. KOHN</p> <p>2 were given to them, were there any documents which</p> <p>3 would show that she had, in fact, assigned them</p> <p>4 work?</p> <p>5 A. Every one has a boss. If my boss gave me a</p> <p>6 directive to do something and I completed the</p> <p>7 assignment, I would not keep a journal or a log or</p> <p>8 that directive on a piece of paper for some future</p> <p>9 time. If Maria told the cycle counters to complete</p> <p>10 a task and they were directed to complete the task,</p> <p>11 their role and their job was to go complete that</p> <p>12 task. There would not be a need to document that or</p> <p>13 save that for some future point in time.</p> <p>14 Q. Have you reviewed all the documents that were</p> <p>15 provided by Southern, generally?</p> <p>16 A. Yes.</p> <p>17 Q. Did you ever see any document showing that</p> <p>18 Maria in any way was exercising authority over the</p> <p>19 cycling counters?</p> <p>20 MS. CABRERA: Objection. Again, this is</p> <p>21 beyond the 30(b)(6) notice. So the witness</p> <p>22 can answer it as a fact witness but not in</p> <p>23 connection with his preparation or any of the</p> <p>24 topics for the 30(b)(6) as this is not one of</p> <p>25 the topics.</p>	<p style="text-align: right;">Page 64</p> <p>1 R. KOHN</p> <p>2 work was actually done? You are saying that the</p> <p>3 fact that they actually did work is evidence that</p> <p>4 Maria was directing it. Are there any documents,</p> <p>5 which would show that Maria was the one who told</p> <p>6 them to do it or directed them to do it?</p> <p>7 A. Maria was their superior. She assigned them</p> <p>8 the work.</p> <p>9 Q. Are there any documents which would show</p> <p>10 Maria was the one actually telling these individuals</p> <p>11 to do this or giving them instructions?</p> <p>12 A. Direction from the WMI administrator to the</p> <p>13 cycle counters wouldn't have come in a document.</p> <p>14 Q. So there would be no document?</p> <p>15 A. There would be no document.</p> <p>16 Q. So there are no documents which actually</p> <p>17 document Maria was assigning work to the cycle</p> <p>18 counters?</p> <p>19 A. Maria was assigning work to the cycle</p> <p>20 counters.</p> <p>21 Q. Well, I know she was, but there are no</p> <p>22 documents that actually show the specific work that</p> <p>23 she was assigning them?</p> <p>24 A. Maria had a list of tasks that needed to get</p> <p>25 completed each day. They didn't get completed on</p>

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<p>1 R. KOHN</p> <p>2 their own. The cycle counters didn't decide they</p> <p>3 were going to jump in and do things without being</p> <p>4 told. I am glad you said that you agree Maria</p> <p>5 assigned the tasks.</p> <p>6 Q. No. A agreeing to that is what you said.</p> <p>7 A. Oh, that is not what I heard.</p> <p>8 Q. Oh, I am agreeing that you said she assigned</p> <p>9 the tasks.</p> <p>10 What I am trying to get at is: Are there any</p> <p>11 documents which show that she was giving them work</p> <p>12 to do?</p> <p>13 A. It would not be something that would be</p> <p>14 documented for future use.</p> <p>15 Q. There's no documents showing whether or not</p> <p>16 she counseled any of the employees?</p> <p>17 MS. CABRERA: Objection.</p> <p>18 Q. Are there any documents that show that she</p> <p>19 counseled any employee during the time period she</p> <p>20 was WMI administrator?</p> <p>21 A. I am not aware of any. However, she could</p> <p>22 have done that with the HR group, with her manager.</p> <p>23 Q. So she could have done it that way, but are</p> <p>24 there any documents which show that she was involved</p> <p>25 in the counseling of any of the members of the</p>	<p>1 R. KOHN</p> <p>2 administrator position that Maria was given?</p> <p>3 A. It appears so, yes.</p> <p>4 Q. Do you see on here where it says she has</p> <p>5 authority over cycle counters or inventory control</p> <p>6 clerks?</p> <p>7 A. I see it says candidate will assist, operate,</p> <p>8 train, oversee and analyze the functions to achieve</p> <p>9 objectives, ensure smooth startup and transition by</p> <p>10 leadership and training. I see it says assist in</p> <p>11 the development of warehouse process, provide</p> <p>12 leadership direction to the team, provide training</p> <p>13 for the employees, implement operation continuous</p> <p>14 improvements measurements and initiatives, organize</p> <p>15 and manage work effectively and efficiently amongst</p> <p>16 her team members, support and train internal</p> <p>17 customers, that's her team, provide leadership and</p> <p>18 management, develop and encourage excellence within</p> <p>19 the team, train and develop a high performing team,</p> <p>20 manage to get work done and develop others,</p> <p>21 adherence to performance management objectives,</p> <p>22 ability to build a high performing team, ability to</p> <p>23 accept and lead change, ability to influence others.</p> <p>24 These are all attributes of a leader or a manager,</p> <p>25 people that lead other people, that are responsible</p>
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<p>1 R. KOHN</p> <p>2 inventory control department during the time she was</p> <p>3 WMI administrator?</p> <p>4 A. Not that I have seen in preparing for today's</p> <p>5 deposition.</p> <p>6 Q. Do you know whether those documents ever</p> <p>7 existed?</p> <p>8 A. I have not seen any in preparing for today's</p> <p>9 deposition.</p> <p>10 Q. Do you know whether those documents exist?</p> <p>11 A. No. I have not seen any.</p> <p>12 Q. So is there any document which shows that</p> <p>13 Maria was involved in the discipline of any employee</p> <p>14 during the time she was WMI administrator?</p> <p>15 MS. CABRERA: Objection.</p> <p>16 A. I am not aware.</p> <p>17 Q. So does her job description say she had</p> <p>18 supervisory authority over the inventory control</p> <p>19 clerks or cycle counters, as they are called?</p> <p>20 A. I believe it says, yes, that she assigned</p> <p>21 them work.</p> <p>22 Q. I am going to show you what was previously</p> <p>23 marked as Plaintiff's Exhibit 3 for identification.</p> <p>24 A. Yes.</p> <p>25 Q. Is this the job description for the WMI</p>	<p>1 R. KOHN</p> <p>2 for other people, and in the hierarchy, the</p> <p>3 inventory control clerks reported to Maria Suarez.</p> <p>4 Q. So we have the hierarchy and that was</p> <p>5 prepared by Southern, correct?</p> <p>6 A. If that's a question, yes.</p> <p>7 Q. Who determined the hours of work of the</p> <p>8 inventory control team?</p> <p>9 A. The counters. The counters can only work</p> <p>10 effectively during non-production times. When the</p> <p>11 company goes into production, we are actually</p> <p>12 picking and shipping cases. It is ineffective to</p> <p>13 cycle count. So the hours by default would be more</p> <p>14 daytime hours than anything else.</p> <p>15 Q. If any one of the cycle counters had to work</p> <p>16 overtime or after their scheduled time of work, who</p> <p>17 told them, and I am talking about the time period</p> <p>18 Maria was WMI administrator?</p> <p>19 A. Maria would have conveyed they needed to work</p> <p>20 additional time.</p> <p>21 Q. So Maria had the authority to tell them to</p> <p>22 work overtime?</p> <p>23 A. Yes. She might have discussed it with John</p> <p>24 Wilkinson because when we go back to an earlier</p> <p>25 document 2257 that we discussed, we did have a cycle</p>

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<p style="text-align: right;">Page 69</p> <p>1 R. KOHN</p> <p>2 counter that counted two items in three hours, which</p> <p>3 is a blatant disregard for anything. So if that</p> <p>4 continued or that was prevalent, that is going to be</p> <p>5 highlighted to management, and although Maria would</p> <p>6 have said we need you to count more, management,</p> <p>7 quote/unquote, might have interceded and said, We</p> <p>8 need more hours. We need different hours. We need</p> <p>9 weekend hours.</p> <p>10 Q. Who would have been the one to decide whether</p> <p>11 these individuals would have to work weekend hours</p> <p>12 or extra hours?</p> <p>13 A. It would have been a conversation between</p> <p>14 Maria and, likely, John Wilkinson, her manager.</p> <p>15 Q. Are there any documents which show that Maria</p> <p>16 directed these employees to work extra hours while</p> <p>17 she was WMI administrator?</p> <p>18 A. I don't know if those items would be</p> <p>19 documented. It would be more of a conversation.</p> <p>20 Q. Are there any documents that you are aware of</p> <p>21 that she directed cycle counters to work extra hours</p> <p>22 or weekends while she was WMI administrator?</p> <p>23 A. I don't think that would be something that</p> <p>24 was reduced to writing.</p> <p>25 Q. So those records would not exist?</p>	<p style="text-align: right;">Page 71</p> <p>1 R. KOHN</p> <p>2 likely could have said, John, I need to work the</p> <p>3 crew this weekend or tonight or tomorrow.</p> <p>4 Q. You were not there for those conversations?</p> <p>5 A. No.</p> <p>6 Q. So you don't know if those conversations even</p> <p>7 happened?</p> <p>8 A. Correct, but I also know those conversations</p> <p>9 must have happened, but because they are not reduced</p> <p>10 to writing you want to suggest that they didn't</p> <p>11 exist.</p> <p>12 Q. I am not suggesting one way or the other. I</p> <p>13 am just trying to get an answer as to whether there</p> <p>14 is any documentation, emails, anything showing that</p> <p>15 Maria was directing cycle counters to work extra</p> <p>16 hours?</p> <p>17 A. It would not be probable that a manager of</p> <p>18 people would email them to request them to work</p> <p>19 overtime. It would not be likely there would be a</p> <p>20 documentation. If the union cycle counters were</p> <p>21 asked to work overtime, they were asked to work</p> <p>22 overtime. If they were mandated to work overtime,</p> <p>23 they were mandated to work overtime.</p> <p>24 Q. My question is a little bit broader. Are</p> <p>25 there any emails between Maria and anyone at Southern</p>
<p style="text-align: right;">Page 70</p> <p>1 R. KOHN</p> <p>2 A. They were most likely conversational. There</p> <p>3 would be no need to write an email or a letter to</p> <p>4 one of your reports to say, I need you to work</p> <p>5 overtime. These were union employees that would</p> <p>6 have been asked to work as directed.</p> <p>7 Q. Would Maria have to get approval from payroll</p> <p>8 in order to direct employees to work overtime?</p> <p>9 A. From payroll, no. From her manager, perhaps.</p> <p>10 Q. Could she on her own direct these employees</p> <p>11 to work 80-hour weeks?</p> <p>12 A. I think 80 hours is extreme.</p> <p>13 Q. On her own could she have assigned these</p> <p>14 individuals to work 80 hours a workweek and leave</p> <p>15 Southern with the bill?</p> <p>16 A. As I said earlier, we all have a boss, and it</p> <p>17 is quite regular to popularize those concepts with</p> <p>18 your boss. So if she wanted to work her crew of</p> <p>19 inventory counters 80 hours a week, she would likely</p> <p>20 have discussed it with her boss.</p> <p>21 Q. Are there any emails between Maria and</p> <p>22 anything at Southern in which she asked permission</p> <p>23 to assign extra hours?</p> <p>24 A. It likely would have been conversational.</p> <p>25 She saw her boss every day, John Wilkinson. She</p>	<p style="text-align: right;">Page 72</p> <p>1 R. KOHN</p> <p>2 documenting her ability to ask cycle counters to</p> <p>3 work extra hours or weekends?</p> <p>4 A. I am not aware of any emails.</p> <p>5 Q. Did she ever ask John Wilkinson in writing</p> <p>6 for approval to schedule extra hours or weekends for</p> <p>7 cycle counters?</p> <p>8 A. It is possible.</p> <p>9 Q. Where are those records? I know it is</p> <p>10 possible --</p> <p>11 A. You asked a hypothetical question, and I am</p> <p>12 giving an answer of it is possible that she asked</p> <p>13 John Wilkinson to allow the cycle counters to work</p> <p>14 additional hours.</p> <p>15 Q. Where would those records exist?</p> <p>16 A. You asked for a data pull of emails.</p> <p>17 Southern had an Ediscovery team that provided you</p> <p>18 with emails from a group of people. I would suggest</p> <p>19 they would in that data dump.</p> <p>20 Q. So if there were any instances in which Maria</p> <p>21 had communicated with John Wilkinson regarding the</p> <p>22 supervision of her team, those would have been</p> <p>23 produced?</p> <p>24 A. If they met the criteria of what you request,</p> <p>25 yes.</p>

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<p>1 R. KOHN</p> <p>2 Q. Did she communicate at all with John</p> <p>3 Wilkinson about the management or supervision of her</p> <p>4 team in writing?</p> <p>5 A. She could have. Again, I think that is a</p> <p>6 hypothetical question.</p> <p>7 Q. Southern is the one that is claiming she had</p> <p>8 this authority. My question is: Are there any</p> <p>9 documents in terms of written communications between</p> <p>10 her and John Wilkinson showing she had this</p> <p>11 authority?</p> <p>12 A. The authority to work her group overtime?</p> <p>13 Q. Correct.</p> <p>14 A. I don't think she needed a document to have</p> <p>15 her associates work overtime.</p> <p>16 MR. MOSER: Can you read back the</p> <p>17 question.</p> <p>18 (Whereupon, the record was read by the</p> <p>19 reporter.)</p> <p>20 Q. Are there any documents that would show that</p> <p>21 she actually was assigning extra hours of work or</p> <p>22 weekend work to her staff?</p> <p>23 A. There could be.</p> <p>24 Q. Well --</p> <p>25 A. In the course of a normal day's business, and</p>	<p>1 R. KOHN</p> <p>2 A. You asked me to look at the job description,</p> <p>3 and I think the job description points to Maria</p> <p>4 managed the group of people.</p> <p>5 Q. Other than that job description, is there any</p> <p>6 other documentation which would show she was</p> <p>7 assigning extra hours or weekends or had the</p> <p>8 authority to assign extra hours or weekends to cycle</p> <p>9 counters?</p> <p>10 A. I have not seen any documents preparing for</p> <p>11 the deposition, but I don't think a document is</p> <p>12 required for Maria to complete the tasks that were</p> <p>13 given to her when she took the job.</p> <p>14 Q. So you can simply say what she was doing, and</p> <p>15 that is good enough?</p> <p>16 MS. CABRERA: Objection.</p> <p>17 A. Maria was their manager.</p> <p>18 Q. When someone wanted to take a day off, a</p> <p>19 personal day, they had to get their manager's</p> <p>20 approval, right?</p> <p>21 A. The union requirements are you give a certain</p> <p>22 amount of notice.</p> <p>23 Q. The cycle counters, did they ever take a day</p> <p>24 off while Maria was the WMI administrator?</p> <p>25 A. I am sure.</p>
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<p>1 R. KOHN</p> <p>2 I will give a for example, if one of the cycle</p> <p>3 counters didn't come in on a particular day, the</p> <p>4 rest of them may not have been able to finish the</p> <p>5 required tasks. Maria may have said, I need the</p> <p>6 rest of you to work overtime to cover for the person</p> <p>7 that is not here.</p> <p>8 Q. Okay. But --</p> <p>9 A. And if we were going to prepare for a</p> <p>10 physical inventory and we needed to get the facility</p> <p>11 prepared, she might have said, I need you to work</p> <p>12 additional hours. If she shared that with her boss</p> <p>13 verbally or in writing, this is a close group of</p> <p>14 people that work together every day. It would be</p> <p>15 unlikely for Maria to have to go to John Wilkinson</p> <p>16 on an everyday basis and ask to allow her group to</p> <p>17 work overtime. Did she go to him on occasion, that</p> <p>18 is probable as well, as a notification, as a</p> <p>19 conversation because she had a manager and the cycle</p> <p>20 counters have managers and I have a manager.</p> <p>21 Q. I am not talking about what you believe</p> <p>22 happened, okay? I am asking whether there are any</p> <p>23 documents that show Maria was involved in the</p> <p>24 assignment of extra hours or weekends to inventory</p> <p>25 clerks while she was the WMI administrator?</p>	<p>1 R. KOHN</p> <p>2 Q. Who did they give notice to?</p> <p>3 A. Likely to Maria.</p> <p>4 Q. Did they give notice in writing? They were</p> <p>5 required to give it in writing, weren't they?</p> <p>6 MS. CABRERA: Objection. Are you going</p> <p>7 to ask a question?</p> <p>8 Q. Were they required to give it in writing?</p> <p>9 A. No. I believe they are required to give</p> <p>10 48-hour notice for a PTO day or to schedule a</p> <p>11 vacation.</p> <p>12 Q. Would the manager's responsibility be to</p> <p>13 advise payroll that that individual was taking paid</p> <p>14 time off?</p> <p>15 A. Sure.</p> <p>16 Q. Are there any emails between Maria and anyone</p> <p>17 at Southern regarding any PTO days that were taken</p> <p>18 by any cycle counters during the period of time she</p> <p>19 was the WMI administrator?</p> <p>20 A. Were there emails from Maria to whom?</p> <p>21 Q. To anyone at Southern.</p> <p>22 A. I don't think it would come in the form of an</p> <p>23 email.</p> <p>24 Q. What would it come in the form of?</p> <p>25 A. A personnel action form. An absenteeism</p>

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<p>1 R. KOHN</p> <p>2 form. It could have been a form that Maria filled</p> <p>3 out or the cycle counter filled out. That was</p> <p>4 passed on to payroll either directly or through</p> <p>5 shift manager.</p> <p>6 Q. Are there any emails between Maria and anyone</p> <p>7 at Southern regarding PTO days taken by cycle</p> <p>8 counters during the time period she was the WMI</p> <p>9 administrator?</p> <p>10 A. I don't think they would come in the form of</p> <p>11 an email.</p> <p>12 Q. So you don't think any such email exists?</p> <p>13 A. If an employee wanted a day off, they would</p> <p>14 tell their boss. They would likely fill out a form,</p> <p>15 or the boss would fill out the form, and it would go</p> <p>16 to payroll. There would not be an email. There</p> <p>17 could be.</p> <p>18 Q. Did the boss have to sign the form?</p> <p>19 A. No. I believe the employee signs the form.</p> <p>20 Q. And the supervisor does not sign the form?</p> <p>21 A. I think it has to be approved.</p> <p>22 Q. It has to be approved by the supervisor,</p> <p>23 correct?</p> <p>24 A. By their report, yes.</p> <p>25 Q. It also has to be approved by payroll,</p>	<p>1 R. KOHN</p> <p>2 A. That is correct.</p> <p>3 Q. Where are the requests for PTO days that she</p> <p>4 approved?</p> <p>5 A. They would not be saved. You are talking</p> <p>6 about something that occurred five years ago?</p> <p>7 Q. Yes.</p> <p>8 A. There would not be a requirement to save</p> <p>9 those forms.</p> <p>10 Q. When someone takes vacation, do they also</p> <p>11 need approval from their manager?</p> <p>12 A. Yes.</p> <p>13 Q. Was Maria involved in the approval of</p> <p>14 vacation time for cycle counters?</p> <p>15 A. I am sure she was.</p> <p>16 Q. Was any of that involvement documented in any</p> <p>17 way?</p> <p>18 A. They would have been on the same attendance</p> <p>19 forms that PTO time would have been on.</p> <p>20 Q. Would any of those documents have been saved?</p> <p>21 A. No. It is very unlikely they would be saved</p> <p>22 this many years later.</p> <p>23 Q. So we have Maria's job description in front</p> <p>24 of us, correct?</p> <p>25 A. Yes.</p>
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<p>1 R. KOHN</p> <p>2 correct?</p> <p>3 A. Approved by payroll, no. Payroll is the</p> <p>4 department who pays people.</p> <p>5 Q. Who approved the request for PTO days for</p> <p>6 cycle counters who took days off during the period</p> <p>7 that Maria was WMI administrator?</p> <p>8 A. Likely Maria. It could have been John</p> <p>9 Wilkinson in her absence. If we were preparing for</p> <p>10 visitors or a cleanup or a scrubbing, that's the</p> <p>11 period before an inventory or if there were other</p> <p>12 people out, it might have went to a different level</p> <p>13 of management.</p> <p>14 Q. Do you know whether Maria approved any PTO</p> <p>15 days for cycle counters during the period of time</p> <p>16 she was WMI administrator?</p> <p>17 A. I would assume so, yes.</p> <p>18 Q. I don't want you to assume. I am asking you,</p> <p>19 if you know?</p> <p>20 A. Personally, I don't know. Her position was a</p> <p>21 functional one where she had reports, and I would</p> <p>22 assume she --</p> <p>23 Q. It is unlikely that a group of four employees</p> <p>24 would not take a PTO day off in a year or a two,</p> <p>25 correct?</p>	<p>1 R. KOHN</p> <p>2 Q. And we have Exhibit 28, correct? Are there</p> <p>3 any documents which you can think of that actually</p> <p>4 exist today, which show that she was managing her</p> <p>5 staff, and I say firsthand documents, documents that</p> <p>6 were generated at the time which she would have</p> <p>7 created or someone else at Southern would have</p> <p>8 created showing that she was actually exercising</p> <p>9 this authority at the time?</p> <p>10 A. The nature of Maria's job required her to</p> <p>11 assign work and hold the inventory control</p> <p>12 clerks/cycle counter accountable for certain tasks.</p> <p>13 I don't have those documents today, five years</p> <p>14 later. You asked for daily worksheets, transfer</p> <p>15 documents. Those wouldn't exist. Maria assigned</p> <p>16 work to a group of people. She ran the functional</p> <p>17 department, the WMI department. It is very clear</p> <p>18 that Maria assigned work and managed this group of</p> <p>19 people on a daily basis.</p> <p>20 Q. Clear based upon on what?</p> <p>21 A. Clear based on that was her job description</p> <p>22 and her role and other people did not assign work,</p> <p>23 did not do Maria's job for her. She was the person</p> <p>24 that spoke to her group of people, to her cycle</p> <p>25 counters.</p>

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<p style="text-align: right;">Page 81</p> <p>1 R. KOHN</p> <p>2 Q. We have her job description. What about</p> <p>3 documents other than the job description? Are there</p> <p>4 any other documents that show or document the work</p> <p>5 that she was doing as a manager?</p> <p>6 A. Yeah. I think in her corrective action, I</p> <p>7 think there were a litany of items that she was held</p> <p>8 accountable for, that she was reminded were her</p> <p>9 tasks and they were all supporting the fact that she</p> <p>10 managed this group of people.</p> <p>11 Q. Are there any documents which show her actual</p> <p>12 exercising managerial authority over this group of</p> <p>13 people?</p> <p>14 A. You wrote down no. Does that mean you are</p> <p>15 anticipating I am going to answer no.</p> <p>16 MS. CABRERA: Just answer the question.</p> <p>17 A. I am not aware of any documents.</p> <p>18 Q. Southern has the burden of proof with regard</p> <p>19 to this issue. They are the ones that have to</p> <p>20 approve that Maria was an exempt manager.</p> <p>21 MS. CABRERA: Is that question? Are you</p> <p>22 making a statement? Documents are not the</p> <p>23 only way to prove something, right? That is</p> <p>24 not the only form of evidence that there is</p> <p>25 if we are going to have this discussion on</p>	<p style="text-align: right;">Page 83</p> <p>1 R. KOHN</p> <p>2 emails. To have a portal where people can go and</p> <p>3 approve positions.</p> <p>4 Q. Would an individual's manager have to approve</p> <p>5 them for hiring before they were hired?</p> <p>6 A. Could you repeat that?</p> <p>7 Q. Would a perspective applicant's manager have</p> <p>8 to approve their hiring before they were hired?</p> <p>9 A. Depending on the position, sure. As I said</p> <p>10 earlier, we all have a boss. If I wanted to hire a</p> <p>11 subordinate, I would likely tell my boss what I was</p> <p>12 doing.</p> <p>13 Q. But the subordinate has to work with their</p> <p>14 manager, right, and be able to take direction from</p> <p>15 their manager?</p> <p>16 A. Yeah.</p> <p>17 Q. So the manager in the whole hiring process</p> <p>18 actually interviews that perspective employee; is</p> <p>19 that fair to say?</p> <p>20 A. I'm not sure what you are saying the manager?</p> <p>21 Which person is that?</p> <p>22 Q. The person they report to. Their direct</p> <p>23 report?</p> <p>24 MS. CABRERA: Objection.</p> <p>25 A. I am not clear on the question. If I wanted</p>
<p style="text-align: right;">Page 82</p> <p>1 R. KOHN</p> <p>2 the record right now in front of the witness</p> <p>3 right now if you want to go there.</p> <p>4 Q. So how would Maria assign work in WMI to the</p> <p>5 cycle counters?</p> <p>6 A. Every day there would be a number of tasks</p> <p>7 that had to completed.</p> <p>8 Q. Would she assign it in the computer or would</p> <p>9 she hand them documents? How would she do it?</p> <p>10 A. It could be both.</p> <p>11 Q. When we look at Plaintiff's Exhibit 3, do you</p> <p>12 recognize that document? I know you reviewed it</p> <p>13 earlier, but the first page it appears to be</p> <p>14 something that was generated by a computer. I am</p> <p>15 asking if you recognize that document?</p> <p>16 A. Yes. I recognize the entire document.</p> <p>17 Q. What is on this first page? What does that</p> <p>18 show?</p> <p>19 A. A chronological listing of a requisition that</p> <p>20 was posted and eventually filled.</p> <p>21 Q. Is this an electronic recording of the hiring</p> <p>22 process?</p> <p>23 A. Yes. I think this is called Taleo. It might</p> <p>24 go by some other names. But, yes, it eases the</p> <p>25 flow, the responsibility flow rather than sending 12</p>	<p style="text-align: right;">Page 84</p> <p>1 R. KOHN</p> <p>2 to hire a subordinate, you are asking me would my</p> <p>3 boss have to interview them?</p> <p>4 Q. No. Would you have to interview them?</p> <p>5 A. Sometimes, yes. Sometimes, no.</p> <p>6 Q. Would you have to approve them?</p> <p>7 A. They are going to report to me?</p> <p>8 Q. Yes.</p> <p>9 A. Sometimes, yes. Sometimes, no. Depending on</p> <p>10 the role.</p> <p>11 Q. So other people can hire individuals who will</p> <p>12 work for you and report to you without your</p> <p>13 approval?</p> <p>14 A. No. I am going to put this in my tense</p> <p>15 because I don't understand when you are saying the</p> <p>16 word manager. If I wanted to hire someone, I could</p> <p>17 go to my HR department and say I would like X, find</p> <p>18 me this candidate. You are asking me would I have</p> <p>19 to approve that?</p> <p>20 Q. No. Would you have to approve the hiring of</p> <p>21 the individual who is ultimately selected to work</p> <p>22 for you?</p> <p>23 A. Again, it depends. It does depend. If I</p> <p>24 needed to go hire an accountant, I am not qualified</p> <p>25 to hire an accountant. If I asked my HR department</p>

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<p>1 R. KOHN</p> <p>2 or a corporate recruiter to hire me an accountant, I</p> <p>3 would not really need to approve that or bless that</p> <p>4 because that is not my skill set.</p> <p>5 Q. On this, your approval was required for</p> <p>6 hiring Maria as WMI administrator, correct?</p> <p>7 A. Sure, as was my superior Larry Goodrich; as</p> <p>8 was HR, Beth Toohig; as was Kevin Randall, my</p> <p>9 subordinate.</p> <p>10 Q. Did she report to John Wilkinson?</p> <p>11 A. Did who report to John Wilkinson. I'm sorry?</p> <p>12 Q. Did Maria report to John Wilkinson?</p> <p>13 A. Yes.</p> <p>14 Q. Is there a particular reason why his approval</p> <p>15 was not requested?</p> <p>16 A. Kevin owns the financials for Metro New York.</p> <p>17 I own them for New York. Beth Toohig managed head</p> <p>18 count. Larry Goodrich was the executive VP general</p> <p>19 manager, the equivalent of a state president. So</p> <p>20 from Kevin up there was an approval process. This</p> <p>21 does not say why Maria or John are not listed on</p> <p>22 this paper. I do not see anything by their names</p> <p>23 not appearing here.</p> <p>24 Q. Are there any documents that would show that</p> <p>25 Maria interviewed any perspective candidates for the</p>	<p>1 R. KOHN</p> <p>2 document. I am talking about any document.</p> <p>3 MS. CABRERA: Well, objection. You have</p> <p>4 asked about this document and then you have</p> <p>5 also asked about in general the process, so</p> <p>6 that is why I am objecting.</p> <p>7 MR. MOSER: Well, he is making reference</p> <p>8 to sometimes an individual --</p> <p>9 MS. CABRERA: Well, he is making the</p> <p>10 comparison because you are drawing the</p> <p>11 comparison.</p> <p>12 Q. Are you saying that John Wilkinson was</p> <p>13 involved in the hiring of Maria for the WMI</p> <p>14 administrator but his involvement was not</p> <p>15 documented?</p> <p>16 A. That's possible. You are looking at a</p> <p>17 hierarchy of approvals in a portal. This does not</p> <p>18 say who interviewed them. This also doesn't say who</p> <p>19 didn't interview. This is approving head count and</p> <p>20 the financial ramifications of hiring someone from</p> <p>21 HR to the site leader Kevin Randall. I am his</p> <p>22 superior. Beth Toohig was Dina's superior, and</p> <p>23 Larry Goodrich was the equivalent of the state</p> <p>24 president.</p> <p>25 Q. Did John Wilkinson weigh in at all on whether</p>
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<p>1 R. KOHN</p> <p>2 time period she was WMI administrator?</p> <p>3 A. Are there documents? Beth Toohig was the HR</p> <p>4 VP at the time. I would say if Maria was part of</p> <p>5 the interview process, she did it in conjunction</p> <p>6 with HR or with Dina.</p> <p>7 Q. Are there any documents that would show that</p> <p>8 Maria was part of the interview process for any</p> <p>9 employee during the period of time she was WMI</p> <p>10 administrator?</p> <p>11 A. Again, I don't know if documents would be</p> <p>12 preserved. If Maria wanted to hire a cycle counter</p> <p>13 and interviewed the cycle counter with HR or with</p> <p>14 John or with Kevin or any combination, I don't think</p> <p>15 there would be a document that says I participated</p> <p>16 in that interview.</p> <p>17 Q. So her involvement in the entire process</p> <p>18 would be undocumented?</p> <p>19 MS. CABRERA: Objection.</p> <p>20 A. As was John Wilkinson's. His name is also</p> <p>21 omitted from this. They surely could have been</p> <p>22 involved in the process. This is only recording</p> <p>23 likely the financial portion of this, who owns the</p> <p>24 budget.</p> <p>25 Q. I am not talking about this specific</p>	<p>1 R. KOHN</p> <p>2 Maria was suitable for this position?</p> <p>3 A. For the WMI administrator role?</p> <p>4 Q. Correct.</p> <p>5 A. Yes. Kevin selected Maria. She was</p> <p>6 qualified for the role. She interviewed for the</p> <p>7 role. Kevin spoke to John, and Maria was hired.</p> <p>8 Q. What about documents showing that</p> <p>9 behind-the-scenes process of considering Maria for</p> <p>10 this position? Are there any documents that show</p> <p>11 communications between anyone at Southern regarding</p> <p>12 why Maria was considered for this position or why</p> <p>13 Maria was hired for this position?</p> <p>14 A. Maria applied for the role and she was hired.</p> <p>15 I believe there were 12 people that applied for the</p> <p>16 role. More than ten. Maria applied for the role.</p> <p>17 She wasn't selected. The company didn't say, You</p> <p>18 win. She applied for the job and she was selected.</p> <p>19 She would report in the new role to her same</p> <p>20 manager, John Wilkinson. Most all of her duties</p> <p>21 would be consistent with what they were in the</p> <p>22 manual environment with the exception of the</p> <p>23 scanning, the actual software that we call the WMI,</p> <p>24 the warehouse management integration system.</p> <p>25 Q. Are there any documents showing the reasons</p>

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<p style="text-align: right;">Page 89</p> <p>1 R. KOHN</p> <p>2 why Maria was selected for this position?</p> <p>3 A. I don't think there would need to be</p> <p>4 documents. There were a handful, a dozen people</p> <p>5 that applied. She applied and she was selected</p> <p>6 because the new role, the WMI administrator, again,</p> <p>7 reported to John Wilkinson, her common boss. The</p> <p>8 tasks involved in this WMI role were identical with</p> <p>9 the exception of the scanning versus the manual</p> <p>10 application of the perpetual inventory from the</p> <p>11 past.</p> <p>12 Q. My question is not whether there would need</p> <p>13 to be documents.</p> <p>14 My question is: Are there any documents</p> <p>15 which show the reasons why Maria was selected for</p> <p>16 the WMI administrator position?</p> <p>17 A. I could give you all the reasons I believe</p> <p>18 she was selected, including she applies for the</p> <p>19 role. I wouldn't think there would be something in</p> <p>20 writing after the fact, with 10 or 12 applicants. I</p> <p>21 think John or Kevin Randall sat with HR or Dina</p> <p>22 Margolis and said of the 12 people, this is who we</p> <p>23 would like to offer the position to. It would be</p> <p>24 unlikely there would be a matrix up.</p> <p>25 Q. So there is not a single document that would</p>	<p style="text-align: right;">Page 91</p> <p>1 R. KOHN</p> <p>2 compares the 10 or 12 applicants highlighting why</p> <p>3 Maria got the role.</p> <p>4 Q. Or explaining in any other way why Maria was</p> <p>5 ultimately selected for this role?</p> <p>6 A. Only that what I just stated. That it was a</p> <p>7 common manager, she was the incumbent in the manual</p> <p>8 system, that this position would have common duties</p> <p>9 with the exception of the scanning.</p> <p>10 Q. Well, these are the reasons why you are</p> <p>11 saying why she was given this role.</p> <p>12 My question is whether there were any</p> <p>13 documents showing the reasons why she was given this</p> <p>14 role?</p> <p>15 A. I don't know if there are any documents that</p> <p>16 exist, but she applied for a role and was given a</p> <p>17 promotion. This was not degrading her salary. This</p> <p>18 was not limiting her upward mobility. This was a</p> <p>19 promotion that got her more money and more</p> <p>20 responsibility. This was a positive. It was a good</p> <p>21 thing for Maria.</p> <p>22 Q. So although her role remained the same, you</p> <p>23 believe that her job description, which is on</p> <p>24 Plaintiff's 3, accurately describes her role as WMI</p> <p>25 administrator?</p>
<p style="text-align: right;">Page 90</p> <p>1 R. KOHN</p> <p>2 have been generated regarding the reasons why Maria</p> <p>3 was selected for this position?</p> <p>4 A. There could have been a document. You are</p> <p>5 asking me if there is a single document. I am not</p> <p>6 aware of any documents that compared the highlights</p> <p>7 or the pros and cons of the 12 applicants and why</p> <p>8 Maria was chosen. Maria had the equivalent role in</p> <p>9 our manual system. When we transferred the</p> <p>10 warehouse from a manual operation to an operation</p> <p>11 that included WMI and scanning, Maria would have</p> <p>12 been the incumbent, the natural fit. She applied</p> <p>13 for the role and she was given the role. With the</p> <p>14 role came a pay increase; it came with more</p> <p>15 responsibility. She was given an additional cycle</p> <p>16 counter, I think, at the time. She asked that the</p> <p>17 department be increased, and there was a cycle</p> <p>18 counter added as soon as she took the role, and it</p> <p>19 made sense for Maria to slide into that role. You</p> <p>20 are asking for is there a document that says that.</p> <p>21 I don't think there was one required.</p> <p>22 Q. Or that one was actually created?</p> <p>23 A. I can't speak to if one was actually created.</p> <p>24 Q. How about whether one exists today?</p> <p>25 A. I am not aware a document that exists that</p>	<p style="text-align: right;">Page 92</p> <p>1 R. KOHN</p> <p>2 A. The WMI administrator role differed from her</p> <p>3 pre WMI administrator role mainly by the manner in</p> <p>4 which she worked and her inventory control</p> <p>5 department worked. They no longer worked with a</p> <p>6 manual system with pencil and paper. They worked</p> <p>7 with computers.</p> <p>8 Q. Who interviewed the cycle counter that was</p> <p>9 hired?</p> <p>10 A. I would say Maria, John, perhaps Kevin</p> <p>11 Randall.</p> <p>12 Q. When you say you would say, do you know who</p> <p>13 interviewed the cycle counter?</p> <p>14 A. No. I would assume, I believe it would be</p> <p>15 Maria, John, and Kevin Randall. The cycle counter</p> <p>16 positions, the inventory control positions are</p> <p>17 critical to the company. They safeguard the</p> <p>18 inventory. If our perpetual inventory is incorrect</p> <p>19 or off, we will not only disappoint our customers</p> <p>20 and may not have the goods they want when they order</p> <p>21 it, but there is a financial ramification to not</p> <p>22 being able to locate inventory --</p> <p>23 Q. As you sit here today, do you know whether</p> <p>24 Maria interviewed that cycle counter that was hired?</p> <p>25 A. Next time I will pause when I answer a</p>

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<p style="text-align: right;">Page 93</p> <p>1 R. KOHN</p> <p>2 question so you will allow me to finish. No, I do</p> <p>3 not know if Maria interviewed the cycle counter. I</p> <p>4 would assume Maria, John, and Kevin Randall talked</p> <p>5 to the cycle counter.</p> <p>6 Q. Did Maria review the qualifications of the</p> <p>7 cycle counter?</p> <p>8 A. Again, I would assume that Maria, John, and</p> <p>9 Kevin Randall interviewed, reviewed the</p> <p>10 qualifications and chose the cycle counters when</p> <p>11 they were hired.</p> <p>12 Q. Did she have any contribution or say whenever</p> <p>13 a cycle counter was hired?</p> <p>14 A. I would, again, assume say the three of them.</p> <p>15 Perhaps with HR if Dina Margolis or Beth Toohig was</p> <p>16 involved. I am sure they all collaborated on who</p> <p>17 the best individual would be as a candidate and</p> <p>18 on-boarded those people?</p> <p>19 Q. Would there be any documents showing she was</p> <p>20 involved in this process at all?</p> <p>21 A. I wouldn't think there would be documents</p> <p>22 that any of the people I named were part of the</p> <p>23 process.</p> <p>24 Q. So you would hire a cycle counter and Kevin</p> <p>25 Randall, John Wilkinson, and Maria's involvement</p>	<p style="text-align: right;">Page 95</p> <p>1 R. KOHN</p> <p>2 Exhibits 24 and 25. It is actually out of order but</p> <p>3 that is fine.</p> <p>4 A. Maria's primary duties included the exercise</p> <p>5 of discretion and independent judgment with</p> <p>6 reference to matters of significance, which would be</p> <p>7 the inventory, controlling the inventory, managing</p> <p>8 and monitoring the inventory, safeguarding the</p> <p>9 company, and identifying any theft of pilferage.</p> <p>10 Maria's primary duty was to manage the department,</p> <p>11 commonly known as the inventory control function.</p> <p>12 Maria customarily and regularly directed work of the</p> <p>13 inventory control cycle counters, and Maria's voice</p> <p>14 was given particular weight regarding hiring or</p> <p>15 firing or disciplining her workers.</p> <p>16 Q. What kind of discretion did Maria have in the</p> <p>17 performance of the duties?</p> <p>18 A. During standard cycle counters, to use that</p> <p>19 as an example, there are different variances that</p> <p>20 the WMI administrator would run down. If your loss</p> <p>21 of a particular item is over X, you should</p> <p>22 investigate it. So with 17,000 items in the</p> <p>23 facility, each one of them being in several</p> <p>24 locations, she had leverage to adjust any location</p> <p>25 by, I believe, it was \$500. So go ahead and make</p>
<p style="text-align: right;">Page 94</p> <p>1 R. KOHN</p> <p>2 would not be documented in any way in the hiring of</p> <p>3 this individual?</p> <p>4 A. No. I believe that the inventory control</p> <p>5 cycle counters would be interviewed by management.</p> <p>6 Management would include Maria, John Wilkinson, HR,</p> <p>7 Kevin. This was a union position. We would find</p> <p>8 the best fit for the organization, and I would not</p> <p>9 think that would be documented.</p> <p>10 MR. MOSER: I need a two-minute break.</p> <p>11 (Whereupon, a recess was taken at this</p> <p>12 time.)</p> <p>13 Q. So let's wrap up on the exemption so that we</p> <p>14 can move on.</p> <p>15 So you are aware that Southern is claiming</p> <p>16 that Maria was an exempt managerial employee and</p> <p>17 that she was an exempt administrative employee,</p> <p>18 correct?</p> <p>19 A. Yes.</p> <p>20 Q. So I am going to ask it again so we don't</p> <p>21 leave anything out.</p> <p>22 Can you please list for me all the reasons</p> <p>23 why Maria was an exempt managerial employee?</p> <p>24 A. May I refer back to our prior exhibit?</p> <p>25 Q. Of course you can. We have Plaintiff's</p>	<p style="text-align: right;">Page 96</p> <p>1 R. KOHN</p> <p>2 the adjustment if it is up to \$500 and move on.</p> <p>3 Anything over the \$500 historically and routinely is</p> <p>4 something you would bring to your manager, and, to</p> <p>5 that point, anything under \$500 she would have the</p> <p>6 ability to write off in totality. That's a great</p> <p>7 responsibility.</p> <p>8 Q. Are there any other reasons other than the</p> <p>9 ones you listed why Maria was considered an exempt</p> <p>10 administrative or managerial employee?</p> <p>11 A. I can attach her functions to Melissa Decker</p> <p>12 Johnson's functions in Upstate New York who held the</p> <p>13 same role who had the same exempt status.</p> <p>14 Q. Are there any other reasons?</p> <p>15 A. I know that when we talk about her role as</p> <p>16 WMI administrator, I think people hear the word</p> <p>17 administrator. Perhaps you hear administrator as</p> <p>18 something less than in the management ranks, but it</p> <p>19 is not. It is someone that is administering the</p> <p>20 inventory and its value. So whether you want to</p> <p>21 refer to Maria as a member of management or as a WMI</p> <p>22 administrator, that would clearly cross the exempt</p> <p>23 line for me.</p> <p>24 Q. Who is Cory Cooper?</p> <p>25 A. Cory Cooper was the one-time East Coast vice</p>

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<p style="text-align: right;">Page 97</p> <p>1 R. KOHN</p> <p>2 president of human resources. He was Beth Toohig's</p> <p>3 manager and again, Beth Toohig was the vice</p> <p>4 president of human resources for New York State. So</p> <p>5 Cory was the next level up in human resources.</p> <p>6 Q. He was down in Florida?</p> <p>7 A. Yes.</p> <p>8 Q. Florida is where the main offices of Southern</p> <p>9 are located?</p> <p>10 A. The main office is in Florida in Miami. Cory</p> <p>11 was in Miramar, Florida, outside of Fort Lauderdale</p> <p>12 in a different campus, not in the corporate office.</p> <p>13 Q. Who did Cory report to?</p> <p>14 A. At what time period?</p> <p>15 Q. Let's take the period Maria was WMI</p> <p>16 administrator?</p> <p>17 A. That was either Michael Head or Terry Arnold.</p> <p>18 Q. Who was Michael Head?</p> <p>19 A. They held the same position. Mr. Head</p> <p>20 retired. He was the national vice president or</p> <p>21 senior vice president of human resources and</p> <p>22 Mr. Head was replaced with Terry Arnold.</p> <p>23 Q. Who did Mr. Head and Mr. Arnold report to?</p> <p>24 A. I believe to Lee Hagar.</p> <p>25 Q. Who is Lee Hagar?</p>	<p style="text-align: right;">Page 99</p> <p>1 R. KOHN</p> <p>2 Q. Were any of these specific tasks listed in</p> <p>3 the job description?</p> <p>4 A. I think it is nomenclature. I think when you</p> <p>5 look at reconciling receivings or task management,</p> <p>6 that is inventory control.</p> <p>7 Q. So it is a different way of saying the same</p> <p>8 thing?</p> <p>9 A. Yes.</p> <p>10 Q. I am going to show you what was marked as</p> <p>11 Plaintiff's Exhibit 4 for identification.</p> <p>12 Have you seen this document before today?</p> <p>13 A. No.</p> <p>14 Q. I would like you to take a moment to look at</p> <p>15 it?</p> <p>16 A. Okay.</p> <p>17 Q. So do you know if that was attached to the</p> <p>18 September 2, 2016, WMI Administrator Performance</p> <p>19 Expectations memo? I am going to show you on my</p> <p>20 laptop so you can actually see it. I am going to</p> <p>21 show you the memo itself, which begins at SGSW1145.</p> <p>22 A. Okay.</p> <p>23 Q. Do you know if Plaintiff's Exhibit 4 was</p> <p>24 provided to Maria with the memo dated September 2,</p> <p>25 2016?</p>
<p style="text-align: right;">Page 98</p> <p>1 R. KOHN</p> <p>2 A. The chief administrator officer and I believe</p> <p>3 corporate secretary.</p> <p>4 Q. Who did Mr. Hagar report to?</p> <p>5 A. You are going up a lot of levels now.</p> <p>6 Q. I know.</p> <p>7 A. I believe he reported to the board or</p> <p>8 ownership.</p> <p>9 Q. I am going to show what was previously marked</p> <p>10 as Plaintiff's Exhibit 2 for identification.</p> <p>11 Have you ever seen that document before</p> <p>12 today?</p> <p>13 A. I have.</p> <p>14 Q. Do you know what this document is?</p> <p>15 A. I think this was a cheat sheet that Melissa</p> <p>16 Decker Johnson put together for Maria as part of</p> <p>17 critical things that would need to be done during</p> <p>18 the transition from the manual perpetual inventory</p> <p>19 method to a scanning method with the frequency for</p> <p>20 most of them. Like, if you don't do anything else,</p> <p>21 make sure you do these.</p> <p>22 Q. Were any of these duties listed on Maria's</p> <p>23 job description?</p> <p>24 A. Yes. It was all part of managing the</p> <p>25 inventory.</p>	<p style="text-align: right;">Page 100</p> <p>1 R. KOHN</p> <p>2 A. It is attached to this document. The letter</p> <p>3 that he and Maria signed said, "I am including a</p> <p>4 copy of your job description and the cycle count</p> <p>5 daily procedure that Steve outlined to everyone last</p> <p>6 week for your review." Since they both signed it, I</p> <p>7 would believe it must have been attached.</p> <p>8 MR. MOSER: We need to stipulate again,</p> <p>9 because I don't have a copy of this. When I</p> <p>10 say I don't have a copy of this, I don't</p> <p>11 believe I have a copy of the memo dated</p> <p>12 September 2, 2016, which is Bate stamped</p> <p>13 14415 to 14416. Can we stipulate this will</p> <p>14 be marked Plaintiff's Exhibit 30 for</p> <p>15 identification?</p> <p>16 MS. CABRERA: Yes.</p> <p>17 (Whereupon, Memo was deemed marked as</p> <p>18 Plaintiff's Exhibit 30, for identification,</p> <p>19 as of this date.)</p> <p>20 Q. 14415 and 14416, does this describe Maria's</p> <p>21 role as WMI administrator?</p> <p>22 A. I think it's laying out the expectations of</p> <p>23 asking for help, of offering support, and putting</p> <p>24 guardrails around the number of 500. I was correct</p> <p>25 defining any large adjustments to bring that</p>

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<p style="text-align: right;">Page 101</p> <p>1 R. KOHN</p> <p>2 forward. I don't think it goes into every</p> <p>3 expectation. To me it appears to be more of a</p> <p>4 counseling and coaching letter that's put out there</p> <p>5 to help her realize she does have support, to give</p> <p>6 her direction and to give her guardrails to protect</p> <p>7 the process.</p> <p>8 Q. Was she expected to perform the duties that</p> <p>9 are listed on Plaintiff's Exhibit 4, which was</p> <p>10 attached to the September 2nd memo?</p> <p>11 A. No. It refers to Steve. I believe it is</p> <p>12 Steve Fendley. This was put together to help her</p> <p>13 similar to what Melissa Decker Johnson put together</p> <p>14 on Exhibit 2, direction and coaching, counseling,</p> <p>15 again to put her on the right track, to make sure</p> <p>16 she touches what is important. This document,</p> <p>17 Exhibit 4, looks like the things that cycle counters</p> <p>18 really need to complete. So on top it talks about</p> <p>19 running the ZY report. I noticed that on things she</p> <p>20 needed to do and running CSI reports. That is the</p> <p>21 general equalization between Sapphire and WMI. It</p> <p>22 appears that you run these reports, you do this type</p> <p>23 of work, and then you can assign work out to the</p> <p>24 cycle counters, and it gives smart direction. If</p> <p>25 production is still running, as I said earlier, it</p>	<p style="text-align: right;">Page 103</p> <p>1 R. KOHN</p> <p>2 Q. In the middle here, those are assignments for</p> <p>3 her staff, right?</p> <p>4 A. Yes.</p> <p>5 Q. What about on top?</p> <p>6 A. Absolutely. Run a report, do your XY report.</p> <p>7 Find the discrepancies, match Sapphire to WMI, and</p> <p>8 then assign work so that people can go and clean up</p> <p>9 everything that you run. Then at the bottom of that</p> <p>10 memo, it says when things settle down and they kind</p> <p>11 of get over that learning curve, you know, different</p> <p>12 things to look to and look towards.</p> <p>13 Q. I would like to draw your attention to</p> <p>14 Exhibit 4 again.</p> <p>15 Are these instructions that she should follow</p> <p>16 or that her staff should follow?</p> <p>17 A. Again, this is what her staff should do. If</p> <p>18 production is still running, your staff should work</p> <p>19 on these things. If production is complete, they</p> <p>20 should work on this stuff.</p> <p>21 Q. It is telling her how she should assign the</p> <p>22 work; is that fair to say?</p> <p>23 A. Yes. This is experts coming from different</p> <p>24 parts of the country telling her, You are in</p> <p>25 trouble, you are failing, your performance is</p>
<p style="text-align: right;">Page 102</p> <p>1 R. KOHN</p> <p>2 is almost futile to count at night or while there is</p> <p>3 production because it is hard to count something</p> <p>4 when things are moving. So it provides advice and</p> <p>5 maybe a bit of coaching. What makes sense. What to</p> <p>6 do three times a week or two times a week. What do</p> <p>7 you do if something is missing. General advice from</p> <p>8 Steve Fendley who was one of the 40 people came on</p> <p>9 site who is an Upstate New York employee who has</p> <p>10 always been part of the startup teams. Coming from</p> <p>11 him and Exhibit 2 coming from Melissa Decker</p> <p>12 Johnson. If I were the person that these were given</p> <p>13 to, I would take great attention to both of these</p> <p>14 because they are coming from two experts both within</p> <p>15 the state of New York, both who are at the top of</p> <p>16 their performance curve.</p> <p>17 Q. This Exhibit 4 was given to Maria in a memo</p> <p>18 entitled WMI Administrator Performance Expectations,</p> <p>19 correct?</p> <p>20 A. Yes.</p> <p>21 Q. Was she expected to do everything on this</p> <p>22 cycle counting daily procedure? Was this part of</p> <p>23 the performance expectations?</p> <p>24 A. No. These are assignments for her staff, for</p> <p>25 her cycle counters.</p>	<p style="text-align: right;">Page 104</p> <p>1 R. KOHN</p> <p>2 degrading. Focusing on these things is a must in</p> <p>3 Plaintiff's 2, and run these reports, reconcile the</p> <p>4 inventory, assign the work this way, not as her</p> <p>5 manager telling her what to do, but as her partners,</p> <p>6 as her cohorts, people that are on her extended team</p> <p>7 coming in to say, We are here to help you. Here is</p> <p>8 our advice from the management point of view and</p> <p>9 from the direct your people to do this point of</p> <p>10 view, and they are even recommending that the</p> <p>11 administrator should reconcile behind counters</p> <p>12 during the day that if a cycle counter comes across</p> <p>13 a gigantic issue, remember you have a \$500 cutoff in</p> <p>14 authority, and many times I have seen during the</p> <p>15 prep for the deposition, Maria wrote off things and</p> <p>16 did not communicate them well in excess of \$500.</p> <p>17 There was one particular day she wrote off</p> <p>18 \$1,700,000 and didn't tell anyone and left it alone.</p> <p>19 I discovered it that one particular weekend. I</p> <p>20 believe it was a Thursday or Friday, and I was in</p> <p>21 the building on Saturday and Sunday with the</p> <p>22 remaining inventory control staff right sizing and</p> <p>23 reversing the \$1,700,000 dollar write-off. So when</p> <p>24 these folks in this particular occurrence and</p> <p>25 Plaintiff's 4, this is direction to say, Hey, Maria,</p>

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<p style="text-align: right;">Page 105</p> <p>1 R. KOHN</p> <p>2 I am your equal somewhere else. Follow these rules.</p> <p>3 This makes sense. This is not saying I am your boss</p> <p>4 and I am telling you what to do and I am telling you</p> <p>5 how to direct work. That is not what this is. This</p> <p>6 a friend from another location saying, I am here to</p> <p>7 help bail you out.</p> <p>8 Q. I am going to draw your attention to the memo</p> <p>9 again, and I would like you to look at the</p> <p>10 acknowledgement, which is below the horizontal line</p> <p>11 that is on page 2. I would like you to read that to</p> <p>12 yourself.</p> <p>13 A. I will read it aloud. I have reviewed the</p> <p>14 above and the performance expectations for a WMI</p> <p>15 administrator and acknowledge my role and</p> <p>16 responsibilities. I further understand that failure</p> <p>17 to follow directives may lead to disciplinary action</p> <p>18 up to and including termination.</p> <p>19 Q. That was presented to Maria by John</p> <p>20 Wilkinson?</p> <p>21 A. Yes.</p> <p>22 Q. This was signed by Maria and John Wilkinson,</p> <p>23 correct?</p> <p>24 A. Correct.</p> <p>25 Q. When was Go Live?</p>	<p style="text-align: right;">Page 107</p> <p>1 R. KOHN</p> <p>2 Live, and then afterwards, but I would say the</p> <p>3 summer of '16, and if we need an exact date, we will</p> <p>4 get one.</p> <p>5 Q. When Maria was the inventory control manager,</p> <p>6 did she have authority to approve any variances in</p> <p>7 inventory?</p> <p>8 A. Yes.</p> <p>9 Q. Was there any limit on amount she could</p> <p>10 approve on variances in inventory when she was the</p> <p>11 inventory control manager before she became WMI</p> <p>12 administrator?</p> <p>13 A. I do recall during inventories it was a \$500</p> <p>14 threshold. So I would say the \$500 was consistent.</p> <p>15 That is standard. That is not just a New York</p> <p>16 phenomenon. That is what we ask of the person</p> <p>17 controlling the books.</p> <p>18 Q. Do you know, as you sit here today, whether</p> <p>19 she was able to approve variances in excess of</p> <p>20 \$5,000 or up to \$5,000 before she became the WMI</p> <p>21 administrator?</p> <p>22 A. As opposed to the \$500 that I stated?</p> <p>23 Q. Correct.</p> <p>24 A. That could have occurred.</p> <p>25 Q. So your belief that she only had up to \$500</p>
<p style="text-align: right;">Page 106</p> <p>1 R. KOHN</p> <p>2 A. The summer of '16.</p> <p>3 Q. July or August?</p> <p>4 A. I would have to check some documents to be</p> <p>5 sure.</p> <p>6 Q. Let me see if I can refresh your recollection</p> <p>7 another way to make it a little easier.</p> <p>8 A. Thank you.</p> <p>9 Q. So I will quote from the testimony of Melissa</p> <p>10 Johnson. I will see if this refreshes your</p> <p>11 recollection or if you agree with this.</p> <p>12 "QUESTION: When did you next meet her?</p> <p>13 "ANSWER: I saw her the week of Go Live?</p> <p>14 "QUESTION: When was that, approximately?</p> <p>15 "ANSWER: I believe July of 2016?"</p> <p>16 Does that make sense?</p> <p>17 A. It was during the summer of 2016. I would</p> <p>18 have to look at some documents to try to figure out</p> <p>19 the Go Live date. There was a period of time</p> <p>20 leading up to Go Live where there were trainers</p> <p>21 there and preparatory issues. You can imagine in a</p> <p>22 large facility going from a manual process to an</p> <p>23 automated process was luminous. That is why the 40</p> <p>24 people were there. So Maria and Melissa could have</p> <p>25 spent time before the Go Live, surely before the Go</p>	<p style="text-align: right;">Page 108</p> <p>1 R. KOHN</p> <p>2 in variances approval as inventory control manager</p> <p>3 was based upon your experience in other areas or</p> <p>4 other facilities?</p> <p>5 A. The \$500 is standardized across the WMI</p> <p>6 administrator role. You are asking the inventory</p> <p>7 manager role in a manual nonautomated environment.</p> <p>8 Was it possible she approved write-offs up to 5,000?</p> <p>9 I think in a manual environment, things were</p> <p>10 probably harder to track and run down, one of the</p> <p>11 reasons the company surely wanted to be automated</p> <p>12 with scanners. So, of course, it was possible that</p> <p>13 she wrote off \$5,000. A moment ago I mentioned that</p> <p>14 she wrote off 1.7 million.</p> <p>15 Q. I am talking about not whether she wrote it</p> <p>16 off. I am talking about the authority that she had</p> <p>17 to write off.</p> <p>18 Did she have authority to write off variance</p> <p>19 in inventory of up to \$5,000 when she was the</p> <p>20 inventory control manager?</p> <p>21 A. If her boss gave her the authority, if John</p> <p>22 Wilkinson gave her the 5,000 number, then yes.</p> <p>23 Q. Do you know if she had authority in excess of</p> <p>24 \$5,000 given to her by John Wilkinson?</p> <p>25 A. I would not know.</p>

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<p style="text-align: right;">Page 109</p> <p>1 R. KOHN</p> <p>2 Q. Plaintiff's Exhibit 4, there is one line here</p> <p>3 that says, The administrator needs to reconcile</p> <p>4 behind them throughout the day.</p> <p>5 That was referring to the cycle counters?</p> <p>6 A. Yes.</p> <p>7 Q. How would Maria do that?</p> <p>8 A. This is advice and this is coaching because</p> <p>9 there are bundles of emails, volumes of emails that</p> <p>10 show Maria accepted cycle counts that could have</p> <p>11 been incorrect and were incorrect from her desk.</p> <p>12 Never walked out on the floor. Never took a look at</p> <p>13 it. Never said or took the matter uphill to her</p> <p>14 managers and said this is wrong. She memorialized a</p> <p>15 bad count. So this suggests that after the cycle</p> <p>16 counters count everything systematically in the</p> <p>17 computer, if you see something that is way off base,</p> <p>18 that's well outside the norm, that exceeds your</p> <p>19 guardrail or your authority, take a walk on the</p> <p>20 floor and take a look at it, put eyes on it, get out</p> <p>21 there before you validate something and say yes. We</p> <p>22 are short or worse case yes, we over and we inflate</p> <p>23 our inventory. Go out there and take a look. Walk</p> <p>24 behind them. Them would be the cycle inventory</p> <p>25 control counters.</p>	<p style="text-align: right;">Page 111</p> <p>1 R. KOHN</p> <p>2 located?</p> <p>3 A. Adjacent to the warehouse.</p> <p>4 Q. Was that an office that was within the</p> <p>5 warehouse itself or distinct and separate and apart?</p> <p>6 A. At what point in time?</p> <p>7 Q. When she first became WMI administrator?</p> <p>8 A. She was inside what I would refer to as the</p> <p>9 office environment adjacent to the warehouse, and</p> <p>10 she was eventually moved into the manager's office</p> <p>11 of the warehouse putting her more in touch with what</p> <p>12 was happening on the floor because Maria did not</p> <p>13 like to go out on the floor.</p> <p>14 Q. I don't know how familiar you are with the</p> <p>15 WMI administrator system. Unfortunately, through</p> <p>16 testimony I am painfully aware of it, but I don't</p> <p>17 want to put words in your mouth.</p> <p>18 If there was a particular variance at a</p> <p>19 location, meaning the amount that the cycle counter</p> <p>20 counted as being in that location was in excess of</p> <p>21 \$250, would that count automatically be rejected by</p> <p>22 the system?</p> <p>23 A. No. It would go into what I would call a</p> <p>24 maintenance queue where someone would have the</p> <p>25 availability, the opportunity to go in and check</p>
<p style="text-align: right;">Page 110</p> <p>1 R. KOHN</p> <p>2 MR. MOSER: Can you repeat my question,</p> <p>3 please.</p> <p>4 (Whereupon, the record was read by the</p> <p>5 reporter.)</p> <p>6 Q. How would Maria reconcile behind the cycle</p> <p>7 counters?</p> <p>8 A. Walking out there, not sitting at her desk</p> <p>9 erroneously memorializing bad counts. The</p> <p>10 suggestion is, the advice is, the coaching is, when</p> <p>11 you see something wrong, go take a walk out there on</p> <p>12 the floor because you cannot fix it from behind a</p> <p>13 desk.</p> <p>14 Q. In her prior role, could she fix things from</p> <p>15 behind a desk?</p> <p>16 A. No.</p> <p>17 Q. Did she have a desk in her prior role?</p> <p>18 A. Yes.</p> <p>19 Q. Did she have a desk when she was the WMI</p> <p>20 administrator?</p> <p>21 A. Yes.</p> <p>22 Q. Where was that desk located?</p> <p>23 A. In the warehouse building. The 345 Underhill</p> <p>24 Boulevard facility.</p> <p>25 Q. Where specifically in the building was it</p>	<p style="text-align: right;">Page 112</p> <p>1 R. KOHN</p> <p>2 that.</p> <p>3 Q. How would the individual check that?</p> <p>4 A. Walk out there and, you know, in WMI terms,</p> <p>5 put you eyes on it. Take a look at it.</p> <p>6 Q. Was that Maria's job?</p> <p>7 A. No. It was her job to assign the work, to</p> <p>8 look at variances, to make sure our WMI inventory</p> <p>9 matched our Sapphire system of record and at the end</p> <p>10 of each day to have them as close as possible to the</p> <p>11 same number. If that meant walking out to a</p> <p>12 location because something seemed erroneous, then</p> <p>13 the task was to walk out to that location and put</p> <p>14 her eyes on it.</p> <p>15 Q. When WMI was first implemented, how many</p> <p>16 locations were being counted per day?</p> <p>17 A. It varies. Again, cycle counters or guests</p> <p>18 from other parts of the country could not really go</p> <p>19 into the system during production, so cycle counts</p> <p>20 only occurred postproduction, and, naturally, when</p> <p>21 you put a new system on production lengthened a</p> <p>22 little bit as people got used to the scanning. So</p> <p>23 there was a shortened window of cycle counting, and</p> <p>24 there was a prescribed number of items that should</p> <p>25 be counted a day, whether they were aisles in the</p>

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<p style="text-align: right;">Page 113</p> <p>1 R. KOHN</p> <p>2 warehouse, bulk locations, pick modules. I think on</p> <p>3 of the memos we read together earlier on Exhibit 4,</p> <p>4 it gave a schedule on what made sense what to count</p> <p>5 two or three times a week.</p> <p>6 Q. How many square feet was the Syosset office</p> <p>7 at the time of Go Live? Was it 375,000 square feet,</p> <p>8 approximately?</p> <p>9 A. Yes.</p> <p>10 Q. Just to put that into perspective, that is</p> <p>11 about six and a half football fields, right?</p> <p>12 A. Okay.</p> <p>13 Q. Not all of the locations are at ground level,</p> <p>14 are they?</p> <p>15 A. That is correct.</p> <p>16 Q. What percentage of the locations are above</p> <p>17 ground level?</p> <p>18 A. Roughly half.</p> <p>19 Q. When we talk about a location, it is a</p> <p>20 physical location in the warehouse, correct?</p> <p>21 A. Yes.</p> <p>22 Q. That is actually a rack?</p> <p>23 A. It could be, not always, but it could be.</p> <p>24 Q. In the main part of the warehouse, is it</p> <p>25 usually a rack, a storage rack?</p>	<p style="text-align: right;">Page 115</p> <p>1 R. KOHN</p> <p>2 Q. Is it fair to say for the purposes of</p> <p>3 inventorying that it was good practice to count each</p> <p>4 location in this warehouse one per quarter, at least</p> <p>5 once per quarter?</p> <p>6 A. That would be good practice. Some locations,</p> <p>7 like pick lines, should be counted several times a</p> <p>8 week.</p> <p>9 Q. Would Maria be responsible for checking the</p> <p>10 pick lines as well if for some reason there was a</p> <p>11 variance on the pick lines?</p> <p>12 A. As details in Exhibit 4?</p> <p>13 Q. Yes.</p> <p>14 A. Go out there and put eyes on it, sure. If</p> <p>15 something was gravely out of balance, yes.</p> <p>16 Q. Correct me if I'm wrong, but my understanding</p> <p>17 of this is that even if she finds a discrepancy, she</p> <p>18 is only allowed to approve a variance of up to \$500;</p> <p>19 is that correct or incorrect?</p> <p>20 A. Yes. That is good practice. \$500 in an</p> <p>21 automated WMI system is the standard.</p> <p>22 Q. So how many counts were being put into the</p> <p>23 queue by WMI when it was first implemented? In other</p> <p>24 words, how many times was a cycle counter going to a</p> <p>25 location and the system is showing that the variance</p>
<p style="text-align: right;">Page 114</p> <p>1 R. KOHN</p> <p>2 A. There are different configurations. Racking</p> <p>3 is one of them.</p> <p>4 Q. How many locations high is the highest part</p> <p>5 of the warehouse?</p> <p>6 A. Four or five locations high.</p> <p>7 Q. How high off the floor is the highest part of</p> <p>8 the warehouse, approximately?</p> <p>9 A. The highest product or the roof?</p> <p>10 Q. The highest product?</p> <p>11 A. 20 something feet, 25 feet.</p> <p>12 Q. How many locations are in the warehouse?</p> <p>13 A. If you include the bottle locations, tens of</p> <p>14 thousands.</p> <p>15 Q. And under WMI, did each location have to be</p> <p>16 counted within a certain window of time?</p> <p>17 A. It is preferable that if there is a short</p> <p>18 shipment of a miss pick, the administrator would</p> <p>19 direct someone to go there and say, We shipped the</p> <p>20 wrong product. Go check that location. That would</p> <p>21 be an exception check. Normally, on Exhibit 4 you</p> <p>22 want to count pick lines a few times a week. You</p> <p>23 want to count the racks a couple of times a week.</p> <p>24 Ideally, you would count the warehouse; ideally,</p> <p>25 four times a year.</p>	<p style="text-align: right;">Page 116</p> <p>1 R. KOHN</p> <p>2 is greater than \$250?</p> <p>3 A. At startup?</p> <p>4 Q. Yes.</p> <p>5 A. It would be quite often.</p> <p>6 Q. Then what was Maria's role after it is put</p> <p>7 into the queue because the variance was in excess of</p> <p>8 \$250?</p> <p>9 A. I said \$500. You are saying \$250.</p> <p>10 Q. Okay. So let's not go to the specific</p> <p>11 amount.</p> <p>12 Is it your understanding that the system</p> <p>13 would re-queue, when I say re-queue, ask you to</p> <p>14 recount a particular location if there was a</p> <p>15 variance in excess of \$250? I am not talking about</p> <p>16 this particular exhibit when we take about Exhibit 4</p> <p>17 or Exhibit 30. I am talking about the way WMI</p> <p>18 worked.</p> <p>19 Did it work that if a cycle counter went to</p> <p>20 a location, if the count and the variance was in</p> <p>21 excess of \$250, that it would automatically be</p> <p>22 re-queued for recounting?</p> <p>23 A. Yes.</p> <p>24 Q. Did Maria have any role in that at all, the</p> <p>25 recounting?</p>

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<p style="text-align: right;">Page 117</p> <p>1 R. KOHN</p> <p>2 A. Physically recounting?</p> <p>3 Q. Correct.</p> <p>4 A. No. She would assign the work to be</p> <p>5 recounted. The solution there is go make the</p> <p>6 adjustment and fix it and you won't have to go back</p> <p>7 there again.</p> <p>8 Q. Let's say she assigned a particular cycle</p> <p>9 counter to recount a location and the system kicks</p> <p>10 it back again because it is in excess of \$250.</p> <p>11 Was she expected to get eyes on the</p> <p>12 merchandise then?</p> <p>13 A. If there was a repetitive problem, it would</p> <p>14 surely make sense to go take a walk and take a look</p> <p>15 at it or dispatch another cycle counter to go count</p> <p>16 it.</p> <p>17 Q. Well, let's say the first cycle is performed</p> <p>18 by one cycle counter, the second cycle is performed</p> <p>19 by another cycle counter and the variance is still</p> <p>20 in excess of \$250, was she supposed to go out on the</p> <p>21 floor and actually get eyes on the merchandise at</p> <p>22 that point?</p> <p>23 A. Yes. It was her job to right size the</p> <p>24 inventory and to manage the process, and if that</p> <p>25 meant getting up out of her desk and walking onto</p>	<p style="text-align: right;">Page 119</p> <p>1 R. KOHN</p> <p>2 A. I believe so, yes.</p> <p>3 Q. Does Southern have any records showing the</p> <p>4 number of locations counted by any cycle counters</p> <p>5 during the time period Maria was WMI administrator?</p> <p>6 A. I wouldn't think the log would extend five</p> <p>7 plus years.</p> <p>8 Q. Does Southern have any documents showing the</p> <p>9 number of locations that were counted by Maria on a</p> <p>10 daily basis when she was WMI administrator?</p> <p>11 A. I don't think documents would exist from five</p> <p>12 or six years ago.</p> <p>13 Q. Do you have any idea how much time it would</p> <p>14 have taken to get eyes on each location that had</p> <p>15 been rejected twice because of a variance in excess</p> <p>16 of \$250 when Maria became the WMI administrator?</p> <p>17 A. I would think after Go Live there would be</p> <p>18 much more time spent. I think if you asked me today</p> <p>19 the amount of times someone has to back and check</p> <p>20 something, it would be minimal.</p> <p>21 Q. But at the beginning of Go Live, it was much</p> <p>22 higher? Is it fair to say that?</p> <p>23 A. Yes.</p> <p>24 Q. Do you have any idea how long it would take</p> <p>25 Maria to get eyes on each location that had been</p>
<p style="text-align: right;">Page 118</p> <p>1 R. KOHN</p> <p>2 the floor, that is a reasonable ask.</p> <p>3 Q. Do you know how many locations were showing</p> <p>4 up with a variance in excess of 250 when WMI was</p> <p>5 first implemented on a daily basis?</p> <p>6 A. No.</p> <p>7 Q. Do you know how many locations in the</p> <p>8 warehouse on a daily basis were being rejected a</p> <p>9 second time because the variance was in excess of</p> <p>10 \$250?</p> <p>11 A. Today, no.</p> <p>12 Q. At the time the system was implemented, it</p> <p>13 would have recorded who did the initial count?</p> <p>14 A. Yes.</p> <p>15 Q. It would have recorded who did the recount?</p> <p>16 A. Yes.</p> <p>17 Q. It would show how many locations were counted</p> <p>18 twice and still showed a variance in excess of \$250?</p> <p>19 A. It would have shown each count.</p> <p>20 Q. It would have shown each count, and it would</p> <p>21 have known the variance was in excess of \$250?</p> <p>22 A. That would have been the default, but yes, it</p> <p>23 would show each count.</p> <p>24 Q. When Maria entered a count using her RF gun,</p> <p>25 would that also register in the system?</p>	<p style="text-align: right;">Page 120</p> <p>1 R. KOHN</p> <p>2 twice rejected because of the variance?</p> <p>3 A. I would say more than the norm, but when</p> <p>4 there is a startup for a Go Live, that is the</p> <p>5 expectation. It is all hands on deck, and surely it</p> <p>6 was more time than it would be post Go Live.</p> <p>7 Q. But you don't know, for instance, whether the</p> <p>8 cycle counters were counting 100 locations a day</p> <p>9 each or 150 locations a day each?</p> <p>10 A. No, but there is reference to Plaintiff's 28</p> <p>11 on August 4, 2016, that shows we had a cycle counter</p> <p>12 count two items in three hours. That is absurd.</p> <p>13 Q. Is Mr. Vey still employed by Southern?</p> <p>14 A. Yes.</p> <p>15 Q. It's good to be human.</p> <p>16 Now, do you know whether the number of</p> <p>17 locations where the count had been rejected twice</p> <p>18 when Maria became the WMI administrator was more</p> <p>19 than 100 locations day?</p> <p>20 A. I don't know the number, but I would say that</p> <p>21 would have been the high point post Go Live.</p> <p>22 Q. What about for the months following Go Live?</p> <p>23 A. I think Maria had some performance issues.</p> <p>24 Maria had performance issues many years throughout</p> <p>25 her tenure at Southern. It started well before the</p>

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<p>1 R. KOHN</p> <p>2 WMI Go Live. I think the WMI Go Live highlighted</p> <p>3 some deficiencies in Maria's work. So to suggest</p> <p>4 the inventory immediately got better after Go Live</p> <p>5 would be less that factual because Maria's</p> <p>6 performance suffered throughout 2016 and 2017.</p> <p>7 Q. In the months immediately following Go Live,</p> <p>8 how many locations per day did she need to get eyes</p> <p>9 on to do her job? Was it more or less than 100?</p> <p>10 A. We don't have that record today from five</p> <p>11 plus years ago to determine what that figure is.</p> <p>12 Q. The cycle counters, is it fair to say that</p> <p>13 discipline over the cycle counters went through</p> <p>14 Barry Finkelstein once Maria became the WMI</p> <p>15 administrator?</p> <p>16 A. No.</p> <p>17 Q. At some point did discipline over the</p> <p>18 Southern counters go through Barry Finkelstein when</p> <p>19 Maria was the WMI administrator?</p> <p>20 A. No. I think discipline over the cycle</p> <p>21 counters went to Barry Finkelstein after Maria</p> <p>22 Suarez was no longer with the organization.</p> <p>23 Q. Just to clarify, at all times during her</p> <p>24 employment with Southern, Maria had both supervisory</p> <p>25 and disciplinary authority of the inventory control</p>	<p>1 R. KOHN</p> <p>2 have went to a manager. It could have been Barry.</p> <p>3 It could have been John Wilkinson. It could have</p> <p>4 been Dina. It could have been Beth Toohig. They</p> <p>5 would talk about a situation and discipline would</p> <p>6 have been the result.</p> <p>7 Q. Did she have to go through Barry Finkelstein,</p> <p>8 John Wilkinson, or anyone else to issue discipline</p> <p>9 before she became the WMI administrator?</p> <p>10 A. Everyone goes through someone else including</p> <p>11 me.</p> <p>12 Q. What does it mean when a manager who has</p> <p>13 disciplinary authority versus a manager who does not</p> <p>14 have discipline authority?</p> <p>15 A. Are you suggesting the differences is</p> <p>16 terminating, hiring and firing?</p> <p>17 Q. No. It is simply a question.</p> <p>18 MS. CABRERA: Just answer the question.</p> <p>19 A. If someone has discipline authority, they can</p> <p>20 recommend or impose discipline on their subordinate.</p> <p>21 Q. What about a manager who does not have</p> <p>22 discipline authority?</p> <p>23 A. I think just by the suggestive nature of a</p> <p>24 manager they have disciplinary authority. If you</p> <p>25 are a manager, you are managing people or processes.</p>
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<p>1 R. KOHN</p> <p>2 team?</p> <p>3 A. I think we talked about this earlier. Barry</p> <p>4 Finkelstein was the shift manager. It's like the</p> <p>5 captain of a boat. You let the captain know what</p> <p>6 goes on on the boat, and Barry Finkelstein was the</p> <p>7 highest ranking person on during days at the</p> <p>8 facility. So Maria would have conferred with him,</p> <p>9 discussed with him the same way John Wilkinson would</p> <p>10 have went to Kevin Randall. It is a courtesy and it</p> <p>11 is a respect issue to let other people know what is</p> <p>12 going on with the workforce.</p> <p>13 Q. Did Maria have disciplinary authority over</p> <p>14 the members of the inventory control team when she</p> <p>15 worked at Southern?</p> <p>16 A. Can you elaborate on disciplinary authority.</p> <p>17 Q. Well, it is a term that I didn't use. It's a</p> <p>18 term I asked another witness, and it is referred to</p> <p>19 in one of these documents that discipline goes to</p> <p>20 Barry Finkelstein.</p> <p>21 So what does Southern mean by discipline?</p> <p>22 A. I think we also talked earlier that human</p> <p>23 resources is part of most disciplinary meetings and</p> <p>24 functions, has been, and if Maria wanted to</p> <p>25 discipline an inventory control clerk, she would</p>	<p>1 R. KOHN</p> <p>2 You have some form of disciplinary authority over</p> <p>3 others beneath you.</p> <p>4 Q. Was there ever a time that Maria was a</p> <p>5 supervisor of the inventory control team but did not</p> <p>6 have discipline authority over them?</p> <p>7 A. There could have been. They were unionized</p> <p>8 counters, and because they were unionized counters,</p> <p>9 it would be obvious that she would have to go to</p> <p>10 someone else before imposing discipline or before</p> <p>11 triggering some kind of discipline. We have a</p> <p>12 relationship with the union, and we would not have</p> <p>13 someone doing something outside the scope of what we</p> <p>14 would we want. They would be working with a manager</p> <p>15 or human resources.</p> <p>16 Q. So did the nature of Maria's discipline</p> <p>17 authority over the inventory department, did that</p> <p>18 change at all in any way from the time her</p> <p>19 department went union until she separated from</p> <p>20 employment?</p> <p>21 A. As Maria's performance declined in 2016</p> <p>22 throughout 2017, I think Maria had more support from</p> <p>23 other people, namely, John Wilkinson, and probably</p> <p>24 coached her through any kind of exchange with the</p> <p>25 union staff, and maybe his involvement overshadowed</p>

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<p style="text-align: right;">Page 125</p> <p>1 R. KOHN</p> <p>2 her authority because again there is volumes of data</p> <p>3 and emails showing her performance declining, and I</p> <p>4 think John Wilkinson was probably more interested in</p> <p>5 getting her through this eminent crisis, having her</p> <p>6 maintain her position than giving her the authority</p> <p>7 to recommend or impose discipline.</p> <p>8 Q. And how did it change in 2016 to 2017?</p> <p>9 A. I'm not sure what the question is. How did</p> <p>10 it change?</p> <p>11 Q. How did the nature of her disciplinary</p> <p>12 authority change in 2016 to 2017 when she was</p> <p>13 getting more support from John?</p> <p>14 A. I am suggesting that Maria was failing badly,</p> <p>15 poorly. She was put on a performance improvement</p> <p>16 plan in January 2017. She had her expectation</p> <p>17 meeting three months prior in September 2016, and</p> <p>18 she was failing, across the board failing. It got</p> <p>19 to the point I am suggesting that John absorbed some</p> <p>20 of her other duties like imposing discipline on the</p> <p>21 union staff because at that time she was probably</p> <p>22 seen as not capable of doing it.</p> <p>23 Q. Can you list for me all the reasons why Maria</p> <p>24 was selected to be the WMI administrator?</p> <p>25 A. I think we covered this. She applied for the</p>	<p style="text-align: right;">Page 127</p> <p>1 R. KOHN</p> <p>2 A. Yes.</p> <p>3 Q. So her choices were either apply for the new</p> <p>4 role or separate from employment or find another</p> <p>5 location within the company?</p> <p>6 MS. CABRERA: Objection to the form of</p> <p>7 the question.</p> <p>8 You can answer.</p> <p>9 A. The company posts jobs routinely. Maria</p> <p>10 volunteered a posting for WMI administrator. She</p> <p>11 was awarded that job with a promotion and expanded</p> <p>12 responsibility and increased compensation. It was a</p> <p>13 good thing for Maria to get that role.</p> <p>14 Q. I can see what a good thing for her it was.</p> <p>15 MS. CABRERA: Objection.</p> <p>16 Q. Did she volunteer to apply or was she told to</p> <p>17 volunteer to apply?</p> <p>18 A. When people post for a job, it does not say I</p> <p>19 was told to apply for a job or I volunteered for</p> <p>20 this position.</p> <p>21 Q. So no one ever told her to apply for this</p> <p>22 job?</p> <p>23 A. I would not know that.</p> <p>24 Q. No one told her that her job was going to be</p> <p>25 eliminated?</p>
<p style="text-align: right;">Page 126</p> <p>1 R. KOHN</p> <p>2 role. The manager was the same in the new role.</p> <p>3 The WMI administrator reported to John Wilkinson.</p> <p>4 So she would have had a common manager. She had the</p> <p>5 qualifications to take on that new role. She was</p> <p>6 what I would refer to as the incumbent in the manual</p> <p>7 processing of the perpetual inventory, and the only</p> <p>8 change would have been we went from a manual</p> <p>9 environment to a more automated systematic</p> <p>10 environment, and Maria would have been the natural</p> <p>11 fit; and since she applied, it made sense to award</p> <p>12 her that role, which was a promotion with an</p> <p>13 expanded responsibility and expanded staff.</p> <p>14 Q. If she had not applied for that position,</p> <p>15 what would have happened?</p> <p>16 A. The old position went away. There would have</p> <p>17 been no role.</p> <p>18 Q. So was it fair to say her position was</p> <p>19 eliminated?</p> <p>20 A. No. The new position was upgraded and she</p> <p>21 applied for a new role and she received a promotion</p> <p>22 with a pay increase and more responsibility.</p> <p>23 Q. However, her old role as inventory control</p> <p>24 manager, is it fair to say that that particular</p> <p>25 position was eliminated?</p>	<p style="text-align: right;">Page 128</p> <p>1 R. KOHN</p> <p>2 A. I would not know that.</p> <p>3 Q. There had been litigation by certain women in</p> <p>4 the inventory control department against Southern,</p> <p>5 correct?</p> <p>6 A. Yes.</p> <p>7 Q. Those consisted of federal lawsuits, correct?</p> <p>8 A. Yes.</p> <p>9 Q. Did Maria have any role in these women coming</p> <p>10 to believe that they had a grievance with Southern?</p> <p>11 A. Could you repeat that.</p> <p>12 MR. MOSER: Can you read that back,</p> <p>13 please.</p> <p>14 (Whereupon, the record was read by the</p> <p>15 reporter.)</p> <p>16 A. I don't believe so.</p> <p>17 Q. Did she ever arrange for any meetings between</p> <p>18 her staff and human resources?</p> <p>19 A. Personally, I do not know, but when we talked</p> <p>20 about Exhibit 28 earlier where the inventory control</p> <p>21 clerks went to Barry Finkelstein wanting to go to</p> <p>22 HR, I am assuming that must be a similar situation.</p> <p>23 Q. Did Maria ever indicate to Southern that she</p> <p>24 believed that the individuals in her department were</p> <p>25 classified differently based upon sex?</p>

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<p style="text-align: right;">Page 129</p> <p>1 R. KOHN</p> <p>2 A. I think I saw your document in preparing for</p> <p>3 the deposition where Maria was asked did the union</p> <p>4 feel that way and her answer was I wouldn't know.</p> <p>5 Q. So at any time did Maria ever inform anyone</p> <p>6 at Southern that she believed that her department</p> <p>7 was classified differently based upon sex?</p> <p>8 A. Not that I am aware of, but again, the</p> <p>9 department was a union department. The jobs are in</p> <p>10 the collective bargaining agreement. The collective</p> <p>11 bargaining agreement prescribes their clerical jobs,</p> <p>12 which is not non warehouse work. I know that</p> <p>13 Exhibit 28 points to the desire of the inventory</p> <p>14 team to be paid as warehouse workers, not as</p> <p>15 clerical. So it sounds like a common theme, but the</p> <p>16 company and the union engage in collective</p> <p>17 bargaining, and collective bargaining is just that.</p> <p>18 It is that bargaining between the union and the</p> <p>19 company where individual agreements are prohibited.</p> <p>20 So if the cycle counter or inventory control clerks</p> <p>21 desired to change their classification or to have</p> <p>22 conversations with other employees about testing the</p> <p>23 water to see if there was an appetite to change</p> <p>24 their classification, that would be a prohibited</p> <p>25 event because they are a part of a collective</p>	<p style="text-align: right;">Page 131</p> <p>1 R. KOHN</p> <p>2 clarified. The cycle counters were and remain</p> <p>3 clerical in nature from the time they were in the</p> <p>4 union, which I think was 2007 or 2008. Back at that</p> <p>5 point, they were clerical, and that is based on a</p> <p>6 35-hour workweek with a certain pay structure. As</p> <p>7 opposed to warehouse workers, which are a 40-hour</p> <p>8 workweek with a different pay grade.</p> <p>9 Q. I don't want to get into this too much, but</p> <p>10 we will delve into it slightly.</p> <p>11 That collective bargaining agreement you are</p> <p>12 referring, does it describe the duties of a clerical</p> <p>13 employee?</p> <p>14 A. Duties, no. I believe it calls out the</p> <p>15 title, talks to work hours, shifts.</p> <p>16 Q. Does that collective bargaining agreement</p> <p>17 describe the duties of a warehouse employee?</p> <p>18 A. No. It calls out pay ranges,</p> <p>19 classifications, shifts, start times, hours.</p> <p>20 Q. It simply states that clerical workers are</p> <p>21 workers that work a 35-hour workweek and</p> <p>22 warehousemen are workers that work a 40-hour</p> <p>23 workweek, correct?</p> <p>24 A. That is part of what it says, yes.</p> <p>25 Q. Who decided who worked the 35-hour workweek?</p>
<p style="text-align: right;">Page 130</p> <p>1 R. KOHN</p> <p>2 bargaining unit, which clearly states the cycle</p> <p>3 counters are clerical by classification.</p> <p>4 Q. The collective bargaining agreement says that</p> <p>5 cycle counters are clerical?</p> <p>6 A. Yes.</p> <p>7 Q. When was the collective bargaining agreement</p> <p>8 changed?</p> <p>9 A. I think the cycle counters were listed as</p> <p>10 clerical after the cycle counters sued the union and</p> <p>11 the cycle counters were always clerical by</p> <p>12 classification. I think on advice of counsel, union</p> <p>13 counsel, it was inserted into the collective</p> <p>14 bargaining agreement to protect the union moving</p> <p>15 forward because it needed to be expressly written</p> <p>16 that the cycle counters were clerical by</p> <p>17 classification, not warehouse by classification.</p> <p>18 Q. So just to clarify, after the cycle counters</p> <p>19 sued the company and union for sex discrimination,</p> <p>20 the collective bargaining agreement was changed to</p> <p>21 protect the union, and it specifically states now</p> <p>22 that cycle counters are not warehouse employees;</p> <p>23 they are clerical employees?</p> <p>24 A. I think that is close. I think the</p> <p>25 collective bargaining wasn't changed. It was</p>	<p style="text-align: right;">Page 132</p> <p>1 R. KOHN</p> <p>2 A. Could you clarify the question? I'm not sure</p> <p>3 what you mean.</p> <p>4 Q. How did you decide who was going to work a</p> <p>5 35-hour workweek and who is going to work a 40-hour</p> <p>6 workweek?</p> <p>7 A. Warehouse workers worked a 40-hour workweek.</p> <p>8 Clerical employees, whether they are in the office</p> <p>9 or the warehouse that are clerical in nature, work</p> <p>10 35 hours a week. The 35-hour-a-week employees</p> <p>11 benefited greatly when raises came around. I will</p> <p>12 give you an example. If a warehouse person received</p> <p>13 a dollar an hour increase \$40 a week, it came out to</p> <p>14 be a dollar an hour. If a 35-hour-a-week employee</p> <p>15 received a dollar, it came out to be a dollar and 12</p> <p>16 and a half cents as opposed to the dollar. So</p> <p>17 across the board when the company agreed to certain</p> <p>18 union demands, they were carried equally against the</p> <p>19 clerical and the warehouse staff benefitting the</p> <p>20 clerical staff.</p> <p>21 Q. Before the clerical staff were included in</p> <p>22 the collective bargaining agreement, how long was</p> <p>23 their workweek?</p> <p>24 A. The clerical staff was always included in the</p> <p>25 collective bargaining agreement.</p>

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<p style="text-align: right;">Page 133</p> <p>1 R. KOHN</p> <p>2 Q. Before the inventory control department was</p> <p>3 included in the collective bargaining agreement, how</p> <p>4 long was their workweek?</p> <p>5 A. I would suppose prior to them going into the</p> <p>6 union in 2007 or 2008, they probably worked 40 hours</p> <p>7 a week.</p> <p>8 Q. So there were employees who worked a 40-hour</p> <p>9 workweek, who were told you are working a 35-hour</p> <p>10 workweek, correct?</p> <p>11 A. They joined the union. They were part of a</p> <p>12 collective bargaining agreement. Their work was set</p> <p>13 for them based on a union contract.</p> <p>14 Q. Who decided who was going to work 35 hours</p> <p>15 and who was going to work 40 hours?</p> <p>16 A. Warehouse workers work 40 hours. Clerical</p> <p>17 workers work 35 hours.</p> <p>18 Q. Who decides if an employee is going to work</p> <p>19 35 or is going to work 40. Once these new</p> <p>20 individuals became part of the union, who decided</p> <p>21 who was going to be a 35-hour-workweek employee and</p> <p>22 who was going to a 40-hour-workweek employee?</p> <p>23 A. After they became part of the union, they</p> <p>24 would have all worked 35 hours a week.</p> <p>25 Q. At the time they went union, the company and</p>	<p style="text-align: right;">Page 135</p> <p>1 R. KOHN</p> <p>2 have warehouse experience?</p> <p>3 MS. CABRERA: Objection.</p> <p>4 A. No, I am not aware of that. I am aware that</p> <p>5 one of the cycle counters at one point applied for a</p> <p>6 warehouse role and withdrew her application once she</p> <p>7 knew she had to work nights according to the union</p> <p>8 contract.</p> <p>9 Q. The union contract says they have to work</p> <p>10 nights?</p> <p>11 A. Absolutely. Seniority prevails at all time.</p> <p>12 Q. That is not my question about seniority.</p> <p>13 My question is: Does the collective</p> <p>14 bargaining agreement say that new employees have to</p> <p>15 throw cases at night?</p> <p>16 A. The collective bargaining agreement people</p> <p>17 bid by position. The favorable position is to be on</p> <p>18 days. The least favorable is to work at night. New</p> <p>19 people end up working at night. That is where you</p> <p>20 start. If a new person started on a different</p> <p>21 shift, somebody with more seniority would have claim</p> <p>22 for that role because they were bypassed.</p> <p>23 Q. Are you aware that prior warehouse experience</p> <p>24 is actually not a qualification, a requirement to</p> <p>25 get a warehouse classified position?</p>
<p style="text-align: right;">Page 134</p> <p>1 R. KOHN</p> <p>2 the union decided they would all have the clerical</p> <p>3 classification; is that fair to say?</p> <p>4 A. Yes.</p> <p>5 Q. You are aware that Southern has never hired a</p> <p>6 female into the warehouse classified position for</p> <p>7 the past 10 years; is that fair to say?</p> <p>8 MS. CABRERA: Objection.</p> <p>9 A. I can answer that. People are hired after</p> <p>10 they apply for positions. If no females apply for a</p> <p>11 warehouse position, they could not have been</p> <p>12 selected. I think I can answer your next question</p> <p>13 without you asking it. I won't. I will let you ask</p> <p>14 it.</p> <p>15 Q. How do you know that any woman didn't apply</p> <p>16 for the warehouse position? How do you know there</p> <p>17 were no female applicants?</p> <p>18 A. I think our human resource came out with that</p> <p>19 data in a previous litigation or claim. Anyone</p> <p>20 hired into the warehouse to start on the nights. So</p> <p>21 regardless of who applies, man or woman, they must</p> <p>22 start at night.</p> <p>23 Q. Are you aware that Beth Toohig testified that</p> <p>24 the women who applied for the warehouse</p> <p>25 classification were disqualified because they didn't</p>	<p style="text-align: right;">Page 136</p> <p>1 R. KOHN</p> <p>2 A. That is something I have never heard before.</p> <p>3 Q. Does Southern take claims of discrimination</p> <p>4 seriously?</p> <p>5 A. Yes.</p> <p>6 Q. Do they take steps to prevent discrimination</p> <p>7 in any form?</p> <p>8 A. Absolutely.</p> <p>9 Q. Do they take steps to prevent discrimination</p> <p>10 on the basis of sex?</p> <p>11 A. Yes.</p> <p>12 Q. What about in terms of retaliation?</p> <p>13 A. Of course.</p> <p>14 Q. Are you familiar with what was alleged in the</p> <p>15 Fajous litigation?</p> <p>16 MS. CABRERA: Objection. You are getting</p> <p>17 very close to a topic that we got a</p> <p>18 protective order. So you are teetering. I</p> <p>19 am also going to say you spent about 15, 20</p> <p>20 minutes discussing a collective bargaining</p> <p>21 agreement that is not part of this case,</p> <p>22 talking about claims that are not part of</p> <p>23 this case, and we are five hours into this</p> <p>24 deposition, and that is what we are wasting</p> <p>25 time on. You can continue.</p>

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<p style="text-align: right;">Page 137</p> <p>1 R. KOHN</p> <p>2 A. I am not familiar today with all the</p> <p>3 specifics of the Fajous case.</p> <p>4 Q. Are you specific with the generalities of it?</p> <p>5 A. Please refresh me.</p> <p>6 Q. The generalities are the inventory control</p> <p>7 clerks spent time on the warehouse floor. They</p> <p>8 moved up to five cases per location. They wore</p> <p>9 harnesses. They used cherry pickers. They were</p> <p>10 exposed to the same risks as the warehousemen. They</p> <p>11 did counting, which is something similar to what the</p> <p>12 checkers did, and they alleged they were doing</p> <p>13 similar work to many warehousemen but were not</p> <p>14 getting classified in the contract as warehousemen</p> <p>15 and were not receiving warehouse pay. That is a</p> <p>16 summary of that.</p> <p>17 A. Okay.</p> <p>18 Q. Following that litigation, the first question</p> <p>19 is: Do you think that Southern has the capacity to</p> <p>20 be honest with itself regarding whether it is</p> <p>21 discriminating or retaliating against employees?</p> <p>22 MS. CABRERA: Objection.</p> <p>23 Answer the question.</p> <p>24 A. That is, forgive me, absurd. Southern</p> <p>25 employs almost 25,000 people. Southern has family</p>	<p style="text-align: right;">Page 139</p> <p>1 R. KOHN</p> <p>2 bargaining agreement. They know what their position</p> <p>3 is, what their pay scale is, what their hours of</p> <p>4 operations are, what the opportunities for</p> <p>5 advancements are. Any one of these inventory</p> <p>6 control cycle counter individuals could have gone</p> <p>7 into the warehouse, progressed up through the ranks</p> <p>8 like any other individual that was hired there.</p> <p>9 They opted not to and they could have, and the</p> <p>10 one person I am aware of who put their name in for a</p> <p>11 warehouse position withdrew their name.</p> <p>12 Q. I am going to show a document that was</p> <p>13 previously marked Exhibit 17.</p> <p>14 Have you ever seen that document before</p> <p>15 today?</p> <p>16 MS. CABRERA: I am going to note my</p> <p>17 objection. I objected to 17 when it was</p> <p>18 first given to a prior witness. I will renew</p> <p>19 that objection. This is not a document that</p> <p>20 has been exchanged in this case. This is a</p> <p>21 document from a prior case that plaintiff</p> <p>22 counsel continues to try and ask questions</p> <p>23 about, but it is not a document in this case,</p> <p>24 and we will move to strike this and any</p> <p>25 documents presented to witnesses that have</p>
<p style="text-align: right;">Page 138</p> <p>1 R. KOHN</p> <p>2 values, and it goes out of its way to protect its</p> <p>3 employees at all times. So yes, Southern has the</p> <p>4 ability to be honest with themselves.</p> <p>5 Q. That is regardless of whether it is a claim</p> <p>6 for equal pay or sex discrimination as alleged by</p> <p>7 the women who worked for Maria or whether it is</p> <p>8 Maria's actual claim of retaliation; is that fair to</p> <p>9 say?</p> <p>10 A. Southern investigates all claims.</p> <p>11 Q. And comes to a conclusion not based upon what</p> <p>12 is in Southern's best interest but what is in the</p> <p>13 best of Southern's employees?</p> <p>14 A. Southern always does the right thing.</p> <p>15 Q. And the right thing would be what is in the</p> <p>16 best interest of the employees; is that fair to say?</p> <p>17 A. Southern always does the right thing. I'm</p> <p>18 not sure of where you are going. If you are</p> <p>19 referring to a prior case or these four people or</p> <p>20 current or past lawsuits or claims, Southern and</p> <p>21 Union 1 operate under a collective bargaining</p> <p>22 agreement. We are bound by the terms of the</p> <p>23 agreement. Our employees waive the right to</p> <p>24 individual agreements. When they sign the card and</p> <p>25 join the union, they are part of a collective</p>	<p style="text-align: right;">Page 140</p> <p>1 R. KOHN</p> <p>2 not been exchanged in discovery before August</p> <p>3 of this year.</p> <p>4 You can answer whatever questions he</p> <p>5 asks.</p> <p>6 A. No. The document is not familiar to me.</p> <p>7 Q. Who is Justin Vey?</p> <p>8 A. Cycle counter inventory control clerk.</p> <p>9 Q. What is this document?</p> <p>10 A. It is titled New Hire Notice.</p> <p>11 Q. According to this document, what is Mr. Vey's</p> <p>12 title?</p> <p>13 A. Warehousemen Night.</p> <p>14 Q. Do you know why it says that?</p> <p>15 A. It must be an error because Justin Vey was</p> <p>16 hired on days as a cycle counter.</p> <p>17 Q. So this was simply a clerical error?</p> <p>18 A. There is no other explanation for Mr. Vey</p> <p>19 being titled a warehouse person at night?</p> <p>20 Q. None?</p> <p>21 A. I don't believe Mr. Vey ever worked at night.</p> <p>22 Q. Do you recognize the signature in the lower</p> <p>23 left-hand corner?</p> <p>24 A. I am trying to figure out who that is. It</p> <p>25 says human resources but I don't know.</p>

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<p>1 R. KOHN</p> <p>2 Q. Do you know if it is Greg Rizzly?</p> <p>3 A. Well, Rizzly L-Y, and this doesn't. I don't</p> <p>4 know.</p> <p>5 Q. So can you list for me all of the reasons why</p> <p>6 Maria was selected for elimination as part of the</p> <p>7 statewide reduction enforce program?</p> <p>8 A. Yes. In early 2018 Southern went through a</p> <p>9 process of looking at internal controls,</p> <p>10 streamlining operations, eliminating positions under</p> <p>11 the guise of protecting the company from expenses,</p> <p>12 scaling back a bit. There were a couple of criteria</p> <p>13 used when we looked at the employees and the</p> <p>14 positions that could have been eliminated, and there</p> <p>15 were 26 positions in New York State that were</p> <p>16 eliminated in April-ish of 2018. Five of them came</p> <p>17 from the operations group, and the positions that</p> <p>18 were looked for were ones that could be eliminated</p> <p>19 where the work could go to other employees without</p> <p>20 the need to backfill that role. Ultimately saving</p> <p>21 money for that position. Another criteria was job</p> <p>22 performance. Who is good at their job, who is poor</p> <p>23 at their job, who could do different work if they</p> <p>24 were to absorb other people's roles, and the WMI</p> <p>25 administrator role was a good candidate for job</p>	<p>1 R. KOHN</p> <p>2 simply to eliminate 26 people?</p> <p>3 A. In an effort to streamline the company to</p> <p>4 increase efficiencies and to eliminate expense, the</p> <p>5 request was to consolidate and fold 26 roles.</p> <p>6 Q. Was the specific instruction simply to</p> <p>7 eliminate 26 roles?</p> <p>8 MS. CABRERA: Objection.</p> <p>9 You can answer.</p> <p>10 A. Yes. To work with human resources and the</p> <p>11 legal team, identify 26 roles that could be</p> <p>12 collapsed and do it correctly.</p> <p>13 Q. When were you notified of the requirement</p> <p>14 that you eliminate 26 roles?</p> <p>15 A. It was in early 2018.</p> <p>16 Q. How much time were you given to eliminate</p> <p>17 these individuals?</p> <p>18 A. I think the people that were identified and</p> <p>19 were terminated were terminated in April, April 6th</p> <p>20 or April 8th, so it would have probably been</p> <p>21 90 days.</p> <p>22 Q. Did you receive a list of individuals to let</p> <p>23 go?</p> <p>24 A. I'm not sure. I don't understand the</p> <p>25 question.</p>
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<p>1 R. KOHN</p> <p>2 elimination and, ultimately, the role was</p> <p>3 eliminated, and this was Maria Suarez's role. Her</p> <p>4 work went to Tonisha Durant and to Barry</p> <p>5 Finkelstein. It was not backfilled, and since her</p> <p>6 job performance was degrading and suffering, got</p> <p>7 through a very difficult 2017. On a performance</p> <p>8 improvement plan considering her belligerent</p> <p>9 difficult attitude with the 40 folks who came to</p> <p>10 help with the Go Live process, her role was one that</p> <p>11 was chosen to eliminate.</p> <p>12 Q. Are there any other reasons why she was</p> <p>13 selected for elimination.</p> <p>14 A. It was jobs that could be eliminated with the</p> <p>15 work absorbed by other employees and with a look at</p> <p>16 performance.</p> <p>17 Q. Now, did you receive any instructions</p> <p>18 regarding the implementation of this elimination</p> <p>19 program from any one of your managers?</p> <p>20 A. No. There was notification that New York was</p> <p>21 slated to reduce 26 roles.</p> <p>22 Q. How many roles were there in the State of New</p> <p>23 York to select from?</p> <p>24 A. Roughly 1500.</p> <p>25 Q. The instructions that you received were</p>	<p>1 R. KOHN</p> <p>2 Q. Were the 26 people chosen for you?</p> <p>3 A. The 26 people were chosen. The 26 positions</p> <p>4 were identified that could be closed. The operation</p> <p>5 staff that I am responsible for had five of those 26</p> <p>6 positions.</p> <p>7 Q. Were the specific positions that would be</p> <p>8 eliminated relayed to you?</p> <p>9 A. Yes.</p> <p>10 Q. Was Maria's position one of those positions?</p> <p>11 A. Yes.</p> <p>12 Q. Are there any documents which show the</p> <p>13 considerations that went into selecting Maria's</p> <p>14 position for elimination?</p> <p>15 A. I don't believe so. I think the</p> <p>16 corresponding managing staff identified people</p> <p>17 within their organization, and in this case Kevin</p> <p>18 Randall identified five people in Metropolitan New</p> <p>19 York.</p> <p>20 Q. Just so we are clear, the instructions that</p> <p>21 you got from the higher ups, were the specific roles</p> <p>22 that should be eliminated communicated to you?</p> <p>23 A. No.</p> <p>24 Q. They were not?</p> <p>25 MS. CABRERA: Objection. Are you asking</p>

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<p>1 R. KOHN</p> <p>2 a question? Are you having a conversation?</p> <p>3 What are you doing here?</p> <p>4 A. Are you asking if we were told who to</p> <p>5 eliminate?</p> <p>6 Q. Yes.</p> <p>7 A. No.</p> <p>8 Q. Were you told which roles to eliminate?</p> <p>9 A. No.</p> <p>10 Q. Were you told which positions to eliminate?</p> <p>11 A. No.</p> <p>12 Q. So you were just told eliminate 26 people,</p> <p>13 any 26 people; is that fair to say?</p> <p>14 MS. CABRERA: Objection to the form of</p> <p>15 the question.</p> <p>16 MR. MOSER: I am trying to understand.</p> <p>17 A. No. I tried this once. I will try it again.</p> <p>18 The company was going through a cost savings</p> <p>19 initiative. It was trying to streamline operations.</p> <p>20 It was trying to become more efficient and better</p> <p>21 managed and run. The company did calculations and</p> <p>22 came up with the number of 26 roles to eliminate in</p> <p>23 New York. Of the 26 roles, five happened to be in</p> <p>24 operations. After looking at roles that could be</p> <p>25 collapsed, with a couple of criteria, what could be</p>	<p>1 R. KOHN</p> <p>2 30(b)(6), so you can testify as Roy as a fact</p> <p>3 witness, if you know, but you are not</p> <p>4 testifying to that as a --</p> <p>5 MR. MOSER: He can say he doesn't know.</p> <p>6 That is fine.</p> <p>7 A. I am not comfortable putting on the record</p> <p>8 what the company made in any period of time.</p> <p>9 Q. I know you are not comfortable.</p> <p>10 How much money did the company earn net</p> <p>11 income in 2017?</p> <p>12 A. I don't know today.</p> <p>13 Q. You have no idea?</p> <p>14 A. No. Today I don't know.</p> <p>15 Q. Today you don't know?</p> <p>16 A. Yes.</p> <p>17 Q. Can you say whether it was more or less than</p> <p>18 a hundred million dollars?</p> <p>19 A. Significantly less.</p> <p>20 Q. Was it more or less than fifty million</p> <p>21 dollars?</p> <p>22 A. I am not going to play the guessing game. I</p> <p>23 am not comfortable with this conversation.</p> <p>24 Q. Why are you not comfortable with it? What</p> <p>25 about the net income from a company --</p>
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<p>1 R. KOHN</p> <p>2 collapsed that had work that could be distributed to</p> <p>3 other employees and not have that vacated role</p> <p>4 backfilled considering job performance go through</p> <p>5 your list of people and come up with in New York 26</p> <p>6 roles. In operations, five were determined to be</p> <p>7 viable.</p> <p>8 Q. Did corporate also tell you what percentage</p> <p>9 should be in operations versus other areas or no?</p> <p>10 A. No. Everyone went through their group of</p> <p>11 people, looked at roles that could be collapsed</p> <p>12 where the work could be distributed to other</p> <p>13 employees considering job performance.</p> <p>14 Q. What was the net income from New York</p> <p>15 operations in 2017?</p> <p>16 A. I am not comfortable disclosing that.</p> <p>17 Q. Well, if there is a cost-saving measure --</p> <p>18 A. Are you asking how much money the company</p> <p>19 made in 2017 or what shedding 26 roles saved the</p> <p>20 company?</p> <p>21 Q. No. I am asking you how much net income the</p> <p>22 company earned from New York operations in 2017. If</p> <p>23 you want, we can mark this portion of the transcript</p> <p>24 confidential.</p> <p>25 MS. CABRERA: It is also not part of the</p>	<p>1 R. KOHN</p> <p>2 A. This is a family owned company. If it was a</p> <p>3 Fortune 500 company, you can go online and find that</p> <p>4 out. This is a family owned company that is owned</p> <p>5 by individuals, and they don't disclose that type of</p> <p>6 information.</p> <p>7 Q. Is it fair to say there was an profit from</p> <p>8 New York operations in 2017?</p> <p>9 A. It is marginal. It is nothing that you are</p> <p>10 imagining. You came out with a hundred million</p> <p>11 dollars and fifty million dollars. It is nowhere at</p> <p>12 all in that realm.</p> <p>13 Q. Well, what it is then?</p> <p>14 A. I just told you I am uncomfortable and I do</p> <p>15 not know the number today.</p> <p>16 Q. What was the total payroll paid to the</p> <p>17 1800 individuals?</p> <p>18 A. I said 1500.</p> <p>19 Q. What was the total payroll for the 1500?</p> <p>20 A. I don't know the number today. I can</p> <p>21 approximate a number for you, but I don't know the</p> <p>22 number today.</p> <p>23 Q. What is your best approximation?</p> <p>24 A. \$150 million.</p> <p>25 Q. How much money was saved by the 26 layoffs on</p>

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<p>1 R. KOHN</p> <p>2 an annual basis?</p> <p>3 A. Five or six million.</p> <p>4 Q. Now, how much money did Southern save from</p> <p>5 eliminating Maria on a yearly basis?</p> <p>6 A. An all-in number with benefits SUDA, FEUDA,</p> <p>7 taxes, workers' compensation, health care, 401K,</p> <p>8 \$125,000.</p> <p>9 Q. Now, what analysis, if any, was done with</p> <p>10 regard to the capacity to reduce the work force in</p> <p>11 New York by 26 before you received those</p> <p>12 instructions?</p> <p>13 MS. CABRERA: Objection.</p> <p>14 A. I'm not sure of the form of the question. I</p> <p>15 think you are asking were we targeting a number.</p> <p>16 Q. Well, how did Southern come up with the</p> <p>17 number of 26?</p> <p>18 A. Southern was looking to save a certain amount</p> <p>19 of money in New York. This was an initiative to</p> <p>20 save money.</p> <p>21 Q. I understand that.</p> <p>22 How did they come up with the number of 26?</p> <p>23 A. My assumption is they took an average rate,</p> <p>24 an all-in rate, to come up with an all-in figure and</p> <p>25 my estimate of the all-in figure number was five to</p>	<p>1 R. KOHN</p> <p>2 Q. Was she one of the lowest paid managers?</p> <p>3 A. No.</p> <p>4 Q. So when you actually went to select the</p> <p>5 individuals, did you go for the maximum savings to</p> <p>6 the company? Was that a factor?</p> <p>7 MS. CABRERA: Objection.</p> <p>8 You can answer.</p> <p>9 A. I did not select the individuals.</p> <p>10 Q. When the individuals were selected, was the</p> <p>11 total savings to the company a factor?</p> <p>12 A. There were a couple of criteria used to</p> <p>13 select the individuals. One was, can we live</p> <p>14 without that position? Could we take a position,</p> <p>15 collapse it, save that money, and give that work to</p> <p>16 other employees without skipping a beat? That was</p> <p>17 the driver. Was there something we could eliminate</p> <p>18 and give the work to other people? The secondary</p> <p>19 criteria was job performance.</p> <p>20 Q. But the total amount to be saved, in other</p> <p>21 words, the individual's total income that would have</p> <p>22 been saved was not a factor; is that correct?</p> <p>23 MS. CABRERA: Objection.</p> <p>24 Answer it again.</p> <p>25 A. The company was looking to eliminate a</p>
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<p>1 R. KOHN</p> <p>2 six million dollars.</p> <p>3 Q. What was the impetus behind this initiative</p> <p>4 to save money?</p> <p>5 A. To save money.</p> <p>6 Q. Would that increase the profits?</p> <p>7 A. When companies are left unchecked for long</p> <p>8 periods of time, employment always grows, and every</p> <p>9 once in a while, companies need to look at</p> <p>10 themselves and scale back or cut back; and as I</p> <p>11 stated, in early 2018 the company came up with an</p> <p>12 initiative to streamline itself to increase</p> <p>13 productivity in avenue of expense reduction.</p> <p>14 Q. Do you have any knowledge of what went into</p> <p>15 arriving at that specific number of 26?</p> <p>16 A. No, other than the company was targeting</p> <p>17 savings.</p> <p>18 Q. Did they tell you salary ranges of the</p> <p>19 individuals who had to be let go?</p> <p>20 A. No.</p> <p>21 Q. They just said eliminate 26?</p> <p>22 A. Yes.</p> <p>23 Q. In terms of being a manager, was Maria one of</p> <p>24 the more highly paid managers?</p> <p>25 A. No.</p>	<p>1 R. KOHN</p> <p>2 certain number of people to save money to reduce its</p> <p>3 expenses. There were people on the list that made</p> <p>4 significantly more money than Ms. Suarez, and there</p> <p>5 were people on the list that made less money than</p> <p>6 Ms. Suarez. Her position was ideal for</p> <p>7 consolidation because the work that was being done</p> <p>8 was able to go to two other individuals that picked</p> <p>9 up the work seamlessly, transparently, and the fact</p> <p>10 that Maria's job performance was highlighted during</p> <p>11 the past 18 months before that in '16 and all</p> <p>12 throughout '17 made that decision simpler.</p> <p>13 Q. So at the time that Maria separated from</p> <p>14 employment, what was Barry Finkelstein's job title?</p> <p>15 A. I believe he was the day manager.</p> <p>16 Q. Did Maria separate from employment in</p> <p>17 April 2008?</p> <p>18 A. I believe it was April of 2018.</p> <p>19 Q. I'm sorry. Did I say 2008?</p> <p>20 A. Yes.</p> <p>21 Q. I apologize.</p> <p>22 According to SGWS1094, which is Plaintiff's</p> <p>23 Exhibit 22, who is the day manager?</p> <p>24 A. Barry Finkelstein.</p> <p>25 Q. Where do you see that?</p>

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<p style="text-align: right;">Page 153</p> <p>1 R. KOHN</p> <p>2 A. Here (indicating). Barry Finkelstein,</p> <p>3 manager.</p> <p>4 Q. Who reports to Barry Finkelstein according to</p> <p>5 this?</p> <p>6 A. The people below him.</p> <p>7 Q. Jerry Danzi reports to Barry Finkelstein?</p> <p>8 A. Yes.</p> <p>9 Q. Peter Lazar reports to Barry Finkelstein?</p> <p>10 A. Yes. Peter Lazar took this open box that</p> <p>11 said manager. Earlier I said Pete Lazar was hired</p> <p>12 to go into the mid-shift manager role when you asked</p> <p>13 what he was.</p> <p>14 Q. Before Barry Finkelstein was a manager, did</p> <p>15 he manage Gary Moncho as well?</p> <p>16 A. Barry Finkelstein was a long-time employee,</p> <p>17 an institution there. Gary Moncho was brand new.</p> <p>18 Pete Lazar was brand new. Jerry Danzi was managing</p> <p>19 the docks, so yes, it is very conceivable that the</p> <p>20 new employees reported through the institution</p> <p>21 manager.</p> <p>22 Q. There is a horizontal line between Barry</p> <p>23 Finkelstein and it is small, but it is still</p> <p>24 horizontal. Do you see that?</p> <p>25 A. Yes, I do.</p>	<p style="text-align: right;">Page 155</p> <p>1 R. KOHN</p> <p>2 A. No. This document, it looks like Barry</p> <p>3 Finkelstein shouldn't have a little line here.</p> <p>4 Q. So according to this document itself, nobody</p> <p>5 reports to Barry Finkelstein; is that fair to say?</p> <p>6 A. No. I am suggesting that Barry Finkelstein</p> <p>7 should not have a horizontal line here, and if this</p> <p>8 document has something that has no indication of</p> <p>9 what happens in this real world. This is an</p> <p>10 organizational chart.</p> <p>11 Q. What about Exhibit 23? According to this</p> <p>12 document, does anyone report to Barry Finkelstein?</p> <p>13 A. Barry Finkelstein was the day manager. Barry</p> <p>14 Finkelstein was responsible for these people</p> <p>15 (indicating).</p> <p>16 Q. According to the document, I am not talking</p> <p>17 about what your understanding is.</p> <p>18 My question is: According to this document,</p> <p>19 does anyone report to Barry Finkelstein?</p> <p>20 A. This is the document that I called out before</p> <p>21 as appearing to be cleaned up with positions removed</p> <p>22 from it and underneath Barry Finkelstein on this</p> <p>23 document could have the cycle counters because after</p> <p>24 Maria left, Barry Finkelstein absorbed the cycle</p> <p>25 counters, and Tonisha absorbed the administrative</p>
<p style="text-align: right;">Page 154</p> <p>1 R. KOHN</p> <p>2 Q. According to this document, does Peter Lazar</p> <p>3 report to Barry Finkelstein?</p> <p>4 A. Can I see the August 2018 document?</p> <p>5 Q. Sure. Absolutely.</p> <p>6 MR. MOSER: Just for the record, what is</p> <p>7 Bates marked SGWS 001103 as well as SGWS</p> <p>8 001094.</p> <p>9 Q. My question was: According to Exhibit 22,</p> <p>10 does anyone report directly to Barry Finkelstein?</p> <p>11 A. Are you asking me if this horizontal line is</p> <p>12 valid or --</p> <p>13 Q. I am asking you --</p> <p>14 A. Easy, easy.</p> <p>15 Q. Well, I don't know why there is so much</p> <p>16 thinking involved.</p> <p>17 MS. CABRERA: Excuse me. Because there</p> <p>18 is a deposition transcript being taken. That</p> <p>19 is why there is so much thinking involved.</p> <p>20 He is not just going to give you answers that</p> <p>21 you want. That is why there is so much</p> <p>22 thinking going on. I want that on the</p> <p>23 record.</p> <p>24 Q. Exhibit 22, does anybody report directly to</p> <p>25 Barry Finkelstein?</p>	<p style="text-align: right;">Page 156</p> <p>1 R. KOHN</p> <p>2 portion of the vacated role.</p> <p>3 Q. Was there a period of time Barry Finkelstein</p> <p>4 worked without a title?</p> <p>5 A. I am not really sure what the question means.</p> <p>6 Everyone has a position and a role.</p> <p>7 Q. Was Peter Lazar hired to replace Barry</p> <p>8 Finkelstein?</p> <p>9 A. No. Peter Lazar was hired to be the</p> <p>10 mid-shift manager to bolster the management team and</p> <p>11 to provide 24-hour coverage with Barry Finkelstein</p> <p>12 on days, Pete Lazar on mids, and Gary Moncho on</p> <p>13 nights.</p> <p>14 THE COURT REPORTER: Can we take a break?</p> <p>15 MR. MOSER: Sure.</p> <p>16 (Whereupon, a recess was taken at this</p> <p>17 time.)</p> <p>18 Q. So who was involved in the selection of Maria</p> <p>19 Suarez as one of the individuals who would separate</p> <p>20 from employment in early 2018?</p> <p>21 A. Kevin Randall.</p> <p>22 Q. Did he make proposals to you?</p> <p>23 A. No. He met with human resources. He spoke</p> <p>24 to John Wilkinson and came up with a group of people</p> <p>25 that included Maria.</p>

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<p>1 R. KOHN</p> <p>2 Q. When was Peter Lazar hired?</p> <p>3 A. I thought it was about five years ago. I</p> <p>4 believe I said that earlier.</p> <p>5 Q. I am going to show you what was marked</p> <p>6 Plaintiff Exhibit 21 for identification. By looking</p> <p>7 at this document, can you tell me whether or not</p> <p>8 Peter Lazar was employed as of January 2017?</p> <p>9 A. No. It does not appear so.</p> <p>10 Q. Can you approximate for me when he was hired?</p> <p>11 A. I thought roughly five years ago. This is</p> <p>12 2017, so maybe it was six years ago.</p> <p>13 Q. I am going to show you Plaintiff's Exhibit 22</p> <p>14 on the last page. According to this document, Peter</p> <p>15 Lazar is a mid-shift manager, correct?</p> <p>16 A. Yes.</p> <p>17 Q. So that means he would have been hired</p> <p>18 sometime between January 2017 and April 2018; is</p> <p>19 that fair to say?</p> <p>20 A. Yes.</p> <p>21 Q. How many managers were hired at the Syosset</p> <p>22 facility in 2017?</p> <p>23 A. I believe Pete Lazar, and I thought at the</p> <p>24 same time Pete Lazar was hired, Carlos Linez was</p> <p>25 roughly that same time. I was looking to see if he</p>	<p>1 R. KOHN</p> <p>2 January 2018, has the total number of managers gone</p> <p>3 up or down?</p> <p>4 A. We would have to count them. I think it</p> <p>5 stayed about the same.</p> <p>6 Q. So you added more manager between</p> <p>7 January 2017 and April 2018 at some point in time,</p> <p>8 correct?</p> <p>9 A. No. I said I believe they stayed about the</p> <p>10 same.</p> <p>11 Q. But this document April 2018, this is after</p> <p>12 this reduction in force, correct?</p> <p>13 A. Yes.</p> <p>14 Q. So how many managers were eliminated as part</p> <p>15 of the reduction in force?</p> <p>16 A. There were five individuals from the</p> <p>17 operations that were eliminated.</p> <p>18 Q. Were they all managers?</p> <p>19 A. They were supervisors and managers, one</p> <p>20 router.</p> <p>21 Q. So before those five positions were</p> <p>22 eliminated, those five managerial positions were</p> <p>23 eliminated, you actually had five more managers than</p> <p>24 you had in January 2017; is that fair to say?</p> <p>25 A. No. They are a different level of people.</p>
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<p>1 R. KOHN</p> <p>2 is on the older one here. I think they were hired</p> <p>3 roughly the same time. I don't see Linez, so he</p> <p>4 must have come in after Lazar.</p> <p>5 Q. What about Sean Kelly? Was he also hired</p> <p>6 between January of 2017 and April 2018?</p> <p>7 A. Sean Kelly has been a long-time employee of</p> <p>8 Southern held numerous jobs in Upstate New York, in</p> <p>9 Metro New York, and now he is the operations leader</p> <p>10 in Katy, Texas. So he came up through the ranks,</p> <p>11 and I think his title there was technology manager.</p> <p>12 Q. Was that position addressed?</p> <p>13 A. Yeah. Sean Kelly, I could run through his</p> <p>14 résumé in my head for you. He started in Upstate</p> <p>15 New York as a router, went to customer service, went</p> <p>16 to purchasing, went to logistics, moved down to</p> <p>17 Metro New York with a full knowledge of the back of</p> <p>18 the house, ran logistics in Metro New York. He</p> <p>19 became our customer service manager in Metro New</p> <p>20 York, came into the warehouse to handle special</p> <p>21 projects and the title of technology manager that</p> <p>22 would make sense coming in after January 1 before</p> <p>23 '18 to be part of WMI, and you can see his reports</p> <p>24 there are WMI trainees.</p> <p>25 Q. So if we look at January 2017 and</p>	<p>1 R. KOHN</p> <p>2 You pointed out Sean Kelly; that's a technology</p> <p>3 manager. You can see by sometime after January 2017</p> <p>4 and this report of April 2018, there is a technology</p> <p>5 manager to support the new efforts that the company</p> <p>6 went towards with progressively managing with</p> <p>7 systems versus doing things manually, and earlier I</p> <p>8 did say Pete Lazar came in to bolster the</p> <p>9 organization to have more management present. A</p> <p>10 different type of employee, yes.</p> <p>11 Q. So the number of managers you had after the</p> <p>12 layoff in April 2018 was roughly the same as it had</p> <p>13 been in January 2017?</p> <p>14 A. It appears that way, yes. It is close.</p> <p>15 Q. So for some reason just in terms of numbers,</p> <p>16 I am not talking about where they fall in the</p> <p>17 organizational chart but in terms of numbers in</p> <p>18 between January 2017 and April 2018, just before the</p> <p>19 layoff, five managers had been added to the staff in</p> <p>20 that time period?</p> <p>21 A. No. I do not know it is five. I said there</p> <p>22 were approximately the same number.</p> <p>23 Q. Approximately?</p> <p>24 A. Five people were reduced as part of the</p> <p>25 reduction in force. They were not all managers.</p>

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<p style="text-align: right;">Page 161</p> <p>1 R. KOHN</p> <p>2 The company went through an exercise to identify</p> <p>3 opportunities to drive cost out of the system by</p> <p>4 streamlining, by upgrading processes, and by</p> <p>5 upgrading people and by identifying positions that</p> <p>6 could be closed, the company was successful in doing</p> <p>7 that. The company did consider job performance, and</p> <p>8 in the case of Ms. Suarez, I am sorry to say, she</p> <p>9 had horrible performance documented over a decade,</p> <p>10 and John Wilkinson desperately tried to help her and</p> <p>11 save her. She was not saved. By fast-forwarding 16</p> <p>12 months and trying to say you let five people go, but</p> <p>13 you hired five others. That is not what this</p> <p>14 reflects. This reflects a bolstering of the</p> <p>15 organization to run leaner, faster, more productive</p> <p>16 with more talented individuals. I mentioned we</p> <p>17 hired Pete Lazar as a person to bolster the mid</p> <p>18 shift. The role wasn't there. I mentioned Sean</p> <p>19 Kelly was a technological genius who has since been</p> <p>20 promoted to run one of our largest distributions in</p> <p>21 Texas.</p> <p>22 These were people that came up through the</p> <p>23 ranks or were brought in from the outside to make</p> <p>24 the organization stronger. That in conjunction with</p> <p>25 closing out some roles that were duplicative or</p>	<p style="text-align: right;">Page 163</p> <p>1 R. KOHN</p> <p>2 from the manual system to the automated system.</p> <p>3 Q. When was Sean Kelly brought on?</p> <p>4 A. When was he brought onto the org chart?</p> <p>5 Q. When was he brought under Kevin Randall's</p> <p>6 direction?</p> <p>7 A. Sometime around here.</p> <p>8 Q. When you say around here, you mean</p> <p>9 January 2017?</p> <p>10 A. Yes. He was in Syosset. He was in New York</p> <p>11 for 15 years. He started in Upstate New York and</p> <p>12 let me just say for half of that time. For the</p> <p>13 second half of that time he was in Metro New York.</p> <p>14 He ran through a gamut of positions in Metropolitan</p> <p>15 New York, gained an enormous amount of knowledge,</p> <p>16 wanted to go into the technology area, which put him</p> <p>17 on Kevin's work chart. He was already doing special</p> <p>18 projects in Metropolitan New York and sat up there</p> <p>19 in a role in a created position post the transition.</p> <p>20 Q. When did John Wilkinson pass? I don't</p> <p>21 remember.</p> <p>22 A. I don't know the date.</p> <p>23 Q. When we look at April 2018 in this</p> <p>24 organizational chart, does this show who was chosen</p> <p>25 for elimination?</p>
<p style="text-align: right;">Page 162</p> <p>1 R. KOHN</p> <p>2 unnecessary made the organization stronger and made</p> <p>3 the exercise of eliminating those positions a</p> <p>4 success.</p> <p>5 Q. So having hired additional staff in 2017 made</p> <p>6 it possible to reduce the staff in 2018; is that</p> <p>7 fair to say?</p> <p>8 A. I don't know when we talked about when these</p> <p>9 people were hired, and these people, like Mr. Kelly,</p> <p>10 was already an employee of the company. He was not</p> <p>11 hired.</p> <p>12 Q. I am talking about the specific facility, the</p> <p>13 Syosset facility?</p> <p>14 A. He was in Syosset.</p> <p>15 Q. He was not in Syosset as of January 2017?</p> <p>16 A. No. Sean Kelly was in Syosset for a decade</p> <p>17 and a half in New York.</p> <p>18 Q. Was he as of January 2017 in Syosset?</p> <p>19 A. He was in a different org chart.</p> <p>20 Q. Where was he?</p> <p>21 A. Mr. Kelly ran the back of the house</p> <p>22 departments and the position before he became the</p> <p>23 manager of technology, he came out of being customer</p> <p>24 service manager and on assignment to the warehouse</p> <p>25 running special projects helping foster transition</p>	<p style="text-align: right;">Page 164</p> <p>1 R. KOHN</p> <p>2 A. I am not understanding does it show.</p> <p>3 Q. I will ask a better question. You have here</p> <p>4 supervisor inven control.</p> <p>5 Was that Maria's job?</p> <p>6 A. It seems that way, yes.</p> <p>7 Q. That was her job, right? And her name was</p> <p>8 deleted simply when she was taken off of the chart;</p> <p>9 is that fair to say?</p> <p>10 A. It appears that way.</p> <p>11 Q. Can you see there are some other blanks here</p> <p>12 right above supervisor inven control. There is</p> <p>13 another box that just says manager, but there is no</p> <p>14 name.</p> <p>15 Was this another individual let go?</p> <p>16 A. No. I think that was the box created for</p> <p>17 Pete Lazar.</p> <p>18 Q. What about the supervisor that is on the</p> <p>19 lower right-hand side of the page, where it says</p> <p>20 supervisor, and there is no name above it.</p> <p>21 Do you know who that pertained to?</p> <p>22 A. I would assume that was an eliminated</p> <p>23 position.</p> <p>24 Q. So in total how many managers were eliminated</p> <p>25 as part of the five that were selected?</p>

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<p>1 R. KOHN</p> <p>2 A. I would say no managers were eliminated.</p> <p>3 Q. How many supervisors were eliminated as part</p> <p>4 of the five?</p> <p>5 A. Five.</p> <p>6 Q. Did Maria ever hold the title of inventory</p> <p>7 control manager?</p> <p>8 A. Before WMI administrator I believe her title</p> <p>9 was warehouse inventory control manager. I think it</p> <p>10 has a warehouse in front of it.</p> <p>11 Q. Were there any documents generated regarding</p> <p>12 the selection of Maria as one of the individuals to</p> <p>13 be eliminated?</p> <p>14 A. Not that I have seen. I know that Kevin met</p> <p>15 with human resources and John to talk about the</p> <p>16 positions that could be collapsed.</p> <p>17 Q. So it was all verbal?</p> <p>18 A. It could have been in writing with human</p> <p>19 resources. I haven't see anything.</p> <p>20 Q. If there were any writings regarding Maria's</p> <p>21 selection actually considering her for elimination,</p> <p>22 where would they be?</p> <p>23 A. At this point from four plus years ago, four</p> <p>24 and a half years ago, I would not know.</p> <p>25 Q. Is it fair to say you took this charge of</p>	<p>1 R. KOHN</p> <p>2 Q. Just so I am clear, it is titled Defendant's</p> <p>3 Responses to Plaintiff's Consolidated Request For</p> <p>4 Production of Documents. These are Southern</p> <p>5 responses for my request for documents. If you turn</p> <p>6 to 19, the question is: We asked for all documents</p> <p>7 concerning the decision to terminate the plaintiff,</p> <p>8 and the response is an objection, and then subject</p> <p>9 to and without waiving those objections, Southern</p> <p>10 references their entire document production, which</p> <p>11 is pages 1 to 2686 of SGWS's original document</p> <p>12 production. I will also further say to you that</p> <p>13 Southern has indicated that they are not withholding</p> <p>14 any documents concerning the decision to terminate</p> <p>15 the plaintiff.</p> <p>16 Based upon that, do you believe that any</p> <p>17 documents exist concerning the decision to terminate</p> <p>18 Maria?</p> <p>19 MS. CABRERA: Objection.</p> <p>20 A. Again, I have not seen this document before.</p> <p>21 It appears that Southern classifying this request to</p> <p>22 be duplicative and references 2686 pages.</p> <p>23 Q. I will share with you I have gone over each</p> <p>24 page, unfortunately. As far as I can tell, there</p> <p>25 are no documents in there which show the actual</p>
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<p>1 R. KOHN</p> <p>2 eliminating a certain number of people very</p> <p>3 seriously?</p> <p>4 A. Yes. The company took it very seriously.</p> <p>5 Q. Is it fair to say Kevin Randall took it very</p> <p>6 seriously as well?</p> <p>7 A. Yes.</p> <p>8 Q. As you sit here today, are there any</p> <p>9 documents that you are aware of which show how</p> <p>10 Southern selected the five individuals that were let</p> <p>11 go in operations?</p> <p>12 A. I believe I stated Kevin met with human</p> <p>13 resources. That would have been Beth Toohig, the</p> <p>14 vice president of human resources. There would have</p> <p>15 been a vetting of the people, the individuals, the</p> <p>16 positions. The company does not take these lightly.</p> <p>17 I am sure internal counsel Lauren Moody was involved</p> <p>18 in it. Are there documents resulting from those</p> <p>19 conversations and meetings? There could be. I am</p> <p>20 not in possession of any documents.</p> <p>21 Q. I am going to show you what was marked as</p> <p>22 Plaintiff's Exhibit 29 for identification?</p> <p>23 A. Yes.</p> <p>24 Q. Have you seen this document before today?</p> <p>25 A. No.</p>	<p>1 R. KOHN</p> <p>2 consideration of the reasons why Maria was</p> <p>3 terminated. There are documented performance issues</p> <p>4 and things like that, but regarding the actual</p> <p>5 decision, there are no documents in there.</p> <p>6 MS. CABRERA: Objection.</p> <p>7 Q. So is it fair to say all of the documents</p> <p>8 that existed regarding the decision to terminate</p> <p>9 Maria are located somewhere in these 2,686 pages?</p> <p>10 A. That is the way I read this, yes.</p> <p>11 Q. If a document is not in those 2,686 pages, it</p> <p>12 does not exist, correct?</p> <p>13 MS. CABRERA: Objection.</p> <p>14 A. I didn't see the 2,686 pages.</p> <p>15 Q. Okay. I got you.</p> <p>16 Now, with regard to request 21, I will read</p> <p>17 it into the record. We asked for all communications</p> <p>18 concerning the employment decisions made with</p> <p>19 respect to the plaintiff for the period from</p> <p>20 January 1, 2014, to the present. Again, Southern</p> <p>21 states some objections but then references the</p> <p>22 entire document response. Do you see that?</p> <p>23 A. I do see the request and the response?</p> <p>24 Q. Is it fair to say that all communications</p> <p>25 about the decision to select Maria as part of the</p>

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<p style="text-align: right;">Page 169</p> <p>1 R. KOHN</p> <p>2 reduction in force would be somewhere in SGWS 1 to</p> <p>3 2686?</p> <p>4 A. It says again the request is duplicated, and</p> <p>5 I do see part of their response says that you are</p> <p>6 seeking documents that are not irrelevant, that are</p> <p>7 vague and ambiguous and unduly burdensome.</p> <p>8 (Whereupon, Email Chain was marked as</p> <p>9 Plaintiff's Exhibit 31, for identification,</p> <p>10 as of this date.)</p> <p>11 Q. I am going to show you what was marked as</p> <p>12 Exhibit 31 for identification. I don't expect you</p> <p>13 to be familiar with the document. I am just going</p> <p>14 to read this into the record. I write to Anjanette</p> <p>15 and Tim, Please confirm that defendant's responses</p> <p>16 to the consolidated request for production of</p> <p>17 documents numbered 1, 2, 3, 7, 8, 9, 12, 13, 14, 17,</p> <p>18 18, 19, 20, and 22 are amended so that the following</p> <p>19 language is inserted at the end of each response.</p> <p>20 "Defendant is not withholding documents responsive</p> <p>21 to this request." And then the response from Angie,</p> <p>22 Yes, that is correct. So according to Southern, no</p> <p>23 documents have been withheld.</p> <p>24 Does that mean that other than what was in</p> <p>25 SGWS 1 to 2686, there are no communications</p>	<p style="text-align: right;">Page 171</p> <p>1 R. KOHN</p> <p>2 23, we ask for all documents concerning the hours</p> <p>3 worked by the plaintiff for the period of January 1,</p> <p>4 2016, until the plaintiff's last date of employment;</p> <p>5 and all documents which defendant contends shows</p> <p>6 that she did not work overtime during this period.</p> <p>7 There are objections and then it says here, Subject</p> <p>8 to and without waiving these objections, Southern</p> <p>9 Glazer's Wine and Spirits does not possess documents</p> <p>10 in response to this request.</p> <p>11 Does that mean that Southern has no documents</p> <p>12 concerning the hours worked by Maria during this</p> <p>13 period of time?</p> <p>14 A. Of being a salaried employee?</p> <p>15 Q. Correct.</p> <p>16 A. I work an enormous amount of hours, and</p> <p>17 Southern gives me credit for working about 40 a</p> <p>18 week. Salaried employees, the company does not</p> <p>19 record hours.</p> <p>20 Q. As a manager, was she required to work</p> <p>21 overtime?</p> <p>22 A. Sometimes. Sure. She was part of Go Live.</p> <p>23 Q. Other than Go Live, was she required to work</p> <p>24 overtime?</p> <p>25 A. I think every manager nowadays. Everyone in</p>
<p style="text-align: right;">Page 170</p> <p>1 R. KOHN</p> <p>2 concerning the employment decisions made with</p> <p>3 respect to Maria for the period from January 1,</p> <p>4 2014, to the present?</p> <p>5 A. Yes. That makes sense.</p> <p>6 Q. Does that also mean that all documents</p> <p>7 concerning the decision to terminate Maria would be</p> <p>8 found somewhere in that document production?</p> <p>9 A. Yes.</p> <p>10 Q. No other documents exist concerning the</p> <p>11 decision to terminate Maria?</p> <p>12 A. Yes.</p> <p>13 Q. So that would mean all of the communications</p> <p>14 regarding the decision to terminate Maria were</p> <p>15 verbal?</p> <p>16 MS. CABRERA: Objection.</p> <p>17 A. I think it means it was part of the 2,686</p> <p>18 documents.</p> <p>19 Q. And if they are not part of the 2,686</p> <p>20 documents, they would be verbal?</p> <p>21 MS. CABRERA: Objection.</p> <p>22 Q. Is that fair to say?</p> <p>23 MS. CABRERA: Same objection.</p> <p>24 A. It seems so, yes.</p> <p>25 Q. Now, Southern also responds, if we turn to</p>	<p style="text-align: right;">Page 172</p> <p>1 R. KOHN</p> <p>2 an authoritative position needs to do what they need</p> <p>3 to do, and if that includes working some overtime,</p> <p>4 yes.</p> <p>5 Q. Is there anything at Southern called an</p> <p>6 investigative file?</p> <p>7 A. I am not familiar with that phrase.</p> <p>8 Q. Does Southern's human resource department</p> <p>9 have investigative files on employees?</p> <p>10 A. I am sure they maintain investigation notes,</p> <p>11 documents, files.</p> <p>12 Q. For what purposes?</p> <p>13 A. In a hypothetical situation, if an employee</p> <p>14 went to human resources with an allegation and the</p> <p>15 department performed an investigation, they would</p> <p>16 likely write a report or file a report somewhere.</p> <p>17 Q. Did Maria submit her records of her hours</p> <p>18 worked to John Wilkinson?</p> <p>19 A. Not to my knowledge. It would not be</p> <p>20 required unless he asked for them for some specific</p> <p>21 reason or she wanted to volunteer the hours she was</p> <p>22 working.</p> <p>23 Q. I am showing you Plaintiff's Exhibit 12 for</p> <p>24 identification. It was previously marked. I would</p> <p>25 like you to read the letter portion of it, which is</p>

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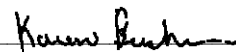
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<p style="text-align: right;">Page 173</p> <p>1 R. KOHN</p> <p>2 from SGWS 2601 to 2607 to yourself.</p> <p>3 My question for you at the end of this to</p> <p>4 keep in mind while you are reading it is whether any</p> <p>5 of the facts that are stated in that appear to be</p> <p>6 incorrect or flawed?</p> <p>7 A. I have completed reading the document.</p> <p>8 Q. Does anything in this document appear to be</p> <p>9 incorrect? Anything stand out as incorrect?</p> <p>10 A. No.</p> <p>11 Q. Did you ever personally meet with Maria?</p> <p>12 A. Sure. I have known Maria for many years that</p> <p>13 she worked there.</p> <p>14 Q. How many times did you meet with Maria</p> <p>15 personally?</p> <p>16 A. Alone?</p> <p>17 Q. Yes.</p> <p>18 A. Probably never.</p> <p>19 Q. How many times did you meet with Maria with</p> <p>20 other people?</p> <p>21 A. Probably at inventory reconciliation meetings</p> <p>22 when the process was manual. Post inventory the</p> <p>23 group would get together, whether it was Gregg</p> <p>24 Rizzly at the time who was replaced by Kevin</p> <p>25 Randall, the accounting team, the inventory team,</p>	<p style="text-align: right;">Page 175</p> <p>1 R. KOHN</p> <p>2 A. Yes.</p> <p>3 Q. Other than being standoffish and belligerent,</p> <p>4 your opinion regarding her performance is based upon</p> <p>5 your personal observation or information from others</p> <p>6 and documents you reviewed?</p> <p>7 A. Information from others and documents I</p> <p>8 reviewed. She reported to John Wilkinson who</p> <p>9 reported to Kevin Randall who reported to me, and I</p> <p>10 had no direct supervision over Maria. I would not</p> <p>11 have any direct supervision of her. She was several</p> <p>12 layers below.</p> <p>13 Q. You can't have time to supervise everyone?</p> <p>14 That is, frankly, not your job, is it?</p> <p>15 A. Correct.</p> <p>16 MR. MOSER: We are going to have to</p> <p>17 stipulate this one as well. It is marked</p> <p>18 SGWS 2351, and we are going to stipulate that</p> <p>19 this is Exhibit 32 for identification.</p> <p>20 (Whereupon, Email was deemed marked as</p> <p>21 Plaintiff's Exhibit 32, for identification,</p> <p>22 as of this date.)</p> <p>23 Q. So have you ever seen this document before</p> <p>24 today?</p> <p>25 A. No.</p>
<p style="text-align: right;">Page 174</p> <p>1 R. KOHN</p> <p>2 Maria. If I was in the building. I might have went</p> <p>3 over. A big conference room type of meeting</p> <p>4 reviewing where the inventories ended, maybe large</p> <p>5 discrepancies, a chance for people to say, Oh, I</p> <p>6 know that is over or short, this truckload came in</p> <p>7 late or this truckload didn't come in. A handful</p> <p>8 of times I probably attended those inventory</p> <p>9 meetings while the company operated a manual</p> <p>10 process.</p> <p>11 Q. In reaching your opinions about the way Maria</p> <p>12 was doing her job, are you relying on communications</p> <p>13 from other individuals and documents that you</p> <p>14 reviewed or are you relying on your personal</p> <p>15 observations of her or both?</p> <p>16 A. Because I have only met with her a handful of</p> <p>17 times, I have seen her in those inventory meetings</p> <p>18 and she was standoffish. You know, when someone</p> <p>19 would say she was belligerent or ignorant or</p> <p>20 wouldn't pay attention or would walk away from them,</p> <p>21 I would believe that because I saw that type of</p> <p>22 behavior in the small amount of times I was with</p> <p>23 her.</p> <p>24 Q. So when you were with her, you observed that</p> <p>25 she was standoffish and belligerent?</p>	<p style="text-align: right;">Page 176</p> <p>1 R. KOHN</p> <p>2 Q. What is this?</p> <p>3 A. It is an email between Maria Suarez, John</p> <p>4 Wilkinson, and Kevin Randall.</p> <p>5 Q. Were you CC'd on this at all?</p> <p>6 A. No. It doesn't appear to include me.</p> <p>7 Q. When John Wilkinson unfortunately passed,</p> <p>8 were his emails retained?</p> <p>9 A. Yes. They would have went to his manager,</p> <p>10 which would have been Kevin Randall.</p> <p>11 Q. How long are those emails kept for?</p> <p>12 A. Depending on the person's position and the</p> <p>13 retention policy, it could vary.</p> <p>14 Q. Do you know for Mr. Randall what the</p> <p>15 retention policy was?</p> <p>16 A. Maybe a year. I think John Wilkinson passed</p> <p>17 away in, I believe, it was 2019. I am embarrassed I</p> <p>18 don't recall.</p> <p>19 Q. So in terms of personal knowledge about what</p> <p>20 Maria was doing as a WMI administrator, her</p> <p>21 performance, which individual today do you believe</p> <p>22 has the most personal knowledge about that?</p> <p>23 A. Today that would be Kevin Randall with John</p> <p>24 Wilkinson's passing.</p> <p>25 Q. So up until John Wilkinson's passing, John</p>

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Page 177		Page 179	
1	R. KOHN	1	I N D E X
2	Wilkinson would have been the individual with the	2	
3	most knowledge about Maria's day-to-day performance	3	WITNESS EXAMINATION BY PAGE
4	in terms of what somebody saw, what somebody heard	4	Roy Kohn Mr. Moser 7
5	and perceived through their senses, correct?	5	
6	A. That makes sense.	6	EXHIBITS
7	Q. Now, was legal counsel consulted or	7	PLAINTIFF'S DESCRIPTION PAGE
8	communicated with regarding decisions made	8	19 Organization Chart January 2016 15
9	concerning Maria?	9	20 Organization Chart October 2016 15
10	A. Absolutely. Internal counsel, Lauren Moody,	10	21 Organization Chart January 2017 15
11	would have been involved in all those matters.	11	22 Operations Chart 15
12	Q. That would have been at every material	12	23 Organization Chart August 2018 15
13	decision made with regard to Maria, for instance,	13	24 Notes 37
14	when she was selected to be WMI administrator?	14	25 Notes 37
15	A. No.	15	26 Email Chain 37
16	Q. When she was selected for elimination?	16	27 Performance Improvement Plan 41
17	A. Yes.	17	28 Email Chain 48
18	Q. How long before Maria was selected for	18	29 Response 48
19	elimination did you begin communicated with Lauren	19	30 Memo 9/2/16 100
20	Moody? So when for the first time did you	20	31 Email Chain 169
21	communicate with Lauren Moody about Maria Suarez's	21	32 Email 175
22	separation from employment?	22	
23	A. I didn't. It would have been Kevin Randall	23	
24	in conjunction with human resources that bubbled it	24	
25	up to counsel.	25	

Page 178		Page 180	
1	R. KOHN	1	C E R T I F I C A T E
2	Q. Would she have had final approval over the	2	
3	decision to let Ms. Suarez go?	3	I, KAREN BERESHEIM, hereby certify that the
4	A. I think the human resource department would	4	Examination Before Trial of ROY KOHN was held before
5	have vetted the concept, the idea, and would have	5	me on this 22nd day of November, 2022; that said
6	bubbled it up for clearance.	6	witness was duly sworn before the commencement of
7	Q. Were any of those communications between the	7	his testimony; that the testimony was taken
8	human resources department and Ms. Moody written?	8	stenographically by myself and then transcribed by
9	A. I would not have been privy to that.	9	myself; that the party was represented by counsel as
10	MR. MOSER: Thank you so much for your	10	appears herein;
11	time. I have no further questions.	11	That the within transcript is a true record
12	(Time Noted: 4:58 p.m.)	12	of the Examination Before Trial of said witness;
13		13	That I am not connected by blood or marriage
14		14	with any of the parties; that I am not interested
15		15	directly or indirectly in the outcome of this
16		16	matter; that I am not in the employ of any of the
17		17	counsel.
18		18	IN WITNESS WHEREOF, I have hereunto set my
19		19	hand this 22nd day of November, 2022.
20		20	
21		21	
22		22	KAREN BERESHEIM
23		23	
24		24	
25		25	

1	R. KOHN
2	Q. Would she have had final approval over the
3	decision to let Ms. Suarez go?
4	A. I think the human resource department would
5	have vetted the concept, the idea, and would have
6	bubbled it up for clearance.
7	Q. Were any of those communications between the
8	human resources department and Ms. Moody written?
9	A. I would not have been privy to that.
10	MR. MOSER: Thank you so much for your
11	time. I have no further questions.
12	(Time Noted: 4:58 p.m.)
13	
14	
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18	Subscribed and sworn to before me
19	this day of 2022.
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Page 181

1 ERRATA SHEET FOR: ROY KOHN
 2 ROY KOHN, being duly sworn, deposes and
 3 says: I have reviewed the transcript of my
 4 proceeding taken on 11/22/2022. The following
 5 changes are necessary to correct my testimony.

	PAGE LINE	CHANGE	REASON
8	---	-----	-----
9	---	-----	-----
10	---	-----	-----
11	---	-----	-----
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18	---	-----	-----
19	---	-----	-----
20	---	-----	-----
21	Witness Signature: _____		
22	Subscribed and sworn to, before me		
23	this ____ day of _____, 20 ____.		
24	_____		
25	(NOTARY PUBLIC)	MY COMMISSION EXPIRES	

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